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MANUAL OF MILITARY LAW.

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1894.



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PREFACE TO THE FIRST EDITION.

IN July, 1879, the Rt. Hon. Colonel F. Stanley, M.P., then Secretary of State for War (*a*), requested the Parliamentary Counsel Office to undertake the work of preparing Rules of Procedure, under section 69 of the Army Discipline and Regulation Act, 1879, and also of superintending the preparation of a Manual, which should contain an edition of the Act and of the above Rules with notes, and form a text book on Military Law. The work was commenced at once by the Parliamentary Counsel Office.

The Rt. Hon. Hugh C. E. Childers, M.P., on becoming Secretary of State for War in 1880, approved of the continuance of the work; and the present book, which is the result, was provisionally circulated by his authority, and is now issued by the authority of his successor, the Rt. Hon. the Marquis of Hartington, M.P. (*b*).

Before the Rules of Procedure could be finally settled, the Army Discipline and Regulation Act, 1879, was repealed, and replaced by the Army Act, 1881, and a complete revision of Section VI (Discipline) of the Queen's Regulation, 1885, also took place.

These changes explain the delay which unavoidably occurred in the completion of the work commenced in 1879.

The book contains chapters giving a general view of the Army Act, 1881, of the Rules of Procedure, and of the history of military law and organisation. Chapters have also been added on collateral matters, as the Law of Riot, &c., and the Customs of War. These form Part I of the book.

(*a*) Now Lord Derby.

(*b*) Now the Duke of Devonshire.

The Army Act, 1881, and the Rules of Procedure with explanatory notes follow; and these, with some additional forms, &c., complete Part II of the book. Part III contains miscellaneous enactments, regulations, and forms, including the Regimental Debts Act, and the regulations made under it; and a set of forms illustrative of the chapter on the Customs of War.

The chapters were written by Sir Henry Thring, K.C.B., Parliamentary Counsel (*a*); Mr. H. Jenkyns, C.B., Assistant Parliamentary Counsel (*b*); Mr. C. P. Ilbert, legal member of the Council of the Viceroy of India (*c*); Lt.-Col. Blake, R.M.L.I.; Mr. A. C. Meysey-Thompson, of the Inner Temple; and the Editor. The Notes to the Army Act and to the Rules were for the most part written by Mr. H. Jenkyns and the Editor; the valuable notes of the decisions of the Judge Advocate-General have been supplied from the office of the Judge Advocate-General, and the illustrations of the forms of charges have been framed by Col. Rocke, Deputy Judge Advocate. The Index was framed by Mr. W. L. Selfe, of Lincoln's Inn (*d*).

The general editorship of the work was entrusted to Mr. G. A. R. FitzGerald, of the Parliamentary Bar, who has during its preparation been in constant communication with the office of the Parliamentary Counsel. Brigadier-General Elles, C.B., late Assistant-Adjutant-General (*e*), has rendered invaluable aid during its whole progress. The Editor is also much indebted to the criticisms and careful corrections of Mr. W. L. Selfe.

Acknowledgment also is due to Major-General R. Carey, C.B., late Deputy Judge Advocate, for the free use of his "*Military Law and Discipline*," a work on the Mutiny Act and Articles of War, which was undertaken and completed shortly before the old

(*a*) Now Lord Thring, K.C.B.

(*b*) Now Sir H. Jenkyns, K.C.B., the Parliamentary Counsel.

(*c*) Now Assistant Parliamentary Counsel.

(*d*) Now His Honour Judge Selfe.

(*e*) Now Major-General Sir W. K. Elles, K.C.B.

form of the Military Code became obsolete. On this account the work, although printed by authority at the War Office, was never published (a).

The debt which the army owes to the late Captain T. F. Simmons for his book on the Constitution and Practice of Courts-Martial, and to his son (sometime Major of Brigade, North-Eastern District, and now a Canon of York), the editor of subsequent editions, is well known. The book was the only complete modern treatise on the practice of courts-martial, which is almost as important as the military law itself.

Some of the editions were undertaken at the request of the military authorities, and in 1868 the editor was informed by the Adjutant-General that His Royal Highness the Field-Marshal Commanding-in-Chief recognised the efforts he had made in collecting the precedents, rules, and axioms which guided the administration of military law (b).

The value of the labours of the author and editor has been still further illustrated by the new Rules of Procedure, which in many instances embody the course of procedure suggested in "Simmons on Courts-Martial."

When the Army Discipline and Regulation Act of 1879 passed, the Rev. Canon Simmons, learning that the Secretary of State contemplated the issue of a Manual of Military Law under authority, generously placed his book at the disposal of the Secretary of State for the good of the Service. The readers of the present Manual will see that extensive use has been made of the offer, and that much of "Simmons on Courts-Martial" survives in the following pages.

The book has been submitted to and carefully revised by the Rt. Hon. G. O. Morgan, Q.C., M.P., Judge Advocate-General (c).

(a) Major-General Carey has died since the above was written.

(b) In the Queen's Regulations of 1868 the book was recommended as a useful book of reference, and in the General Order of 1st November, 1873, prescribing the examination of regimental officers previous to promotion, it was mentioned as useful for officers preparing for examination.

(c) Now Sir G. O. Morgan, Bart.

His Royal Highness the Field-Marshal Commanding-in-Chief has also been pleased to approve of the work.

An abbreviated edition of the work, in the form of a practical manual, will be issued as soon as possible.

May, 1884.

ADVERTISEMENT TO THE SECOND EDITION.

This edition has been revised throughout by the Editor with the advice and assistance of Mr. Jenkyns, and Colonel W. R. Lascelles, A.A.G.

November, 1887.

ADVERTISEMENT TO THE THIRD EDITION.

New Rules of Procedure were issued in 1893, chiefly in consequence of the amendments made in the Army Act, which fused together the Field General Court-Martial and the Summary Court-Martial; and these Rules, as well as the various amendments of the Army Act, are embodied in the present edition, which has again been revised by the Editor, with the advice and assistance of Colonel Hildyard, late Assistant Adjutant-General, and now Commandant of the Staff College. The Index has been completely re-cast in a form which, it is hoped, will increase its usefulness to Officers and others; and the Editor wishes particularly to acknowledge the ability and industry brought to this portion of the work by Mr. James Huggett, of the War Office.

July, 1894.

NOTE.—In a work covering so much ground there must inevitably be errors; any corrections or suggestions will be gratefully received; they should be addressed to —

“The Editor,
(Manual of Military Law),
Care of the Under Secretary of State,
War Office, S.W.”

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LIST OF ABBREVIATED REFERENCES.

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|-----------------------------|--|
| Alison | History of Europe, by Sir Archibald Alison. |
| Bac. Abr. | Bacon's Abridgment of the Law, 5th edition, 1798. |
| Barn. & Adol. | Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830-34. |
| Barn. & Ald. | Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817-22. |
| Barn. & Cr. | Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822-30. |
| Best and Smith | Best and Smith's Reports. |
| Bro. P. C. | Brown's Cases in Parliament. |
| Broderip & Bingham | Broderip and Bingham's Reports. |
| Burr | Burrow's Reports, 5th edition, 5 vols., 1812. |
| Campbell | Campbell's Reports. |
| Car. & Marsh. | Carrington & Marshman's Reports. |
| C. & P. | Carrington & Payne's Reports, 9 vols., 1823-41. |
| Christian's Blackstone. . . | Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols., 1803. |
| Clode Mil. Forces | Clode's Military Forces of the Crown, 2 vols., 1869. |
| Cobbett, Parl. Hist. | Cobbett's Parliamentary History. |
| Coke Inst. | Coke's Institutes of the Laws of England, 4 vols., 1832 and 1817. |
| Comm. Journ. | Journal of the House of Commons. |
| Com. Dig. | Comyn's Digest of the Laws of England, 5th edition, 7 vols., 1822. |
| Cox Crim. Ca. | Cox's Criminal Cases. |
| Dowl. & R. | Dowling and Ryland's Reports. |
| East | East's Reports, 16 vols., 1801-14. |
| F. & F. . . . | Foster and Finlason's Reports. |
| Grose, Mil. Antiquities | Military Antiquities and History of Ancient Armour, by Capt. F. Grose, 1801. |

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|-------------------------|---|
| Hale, Hist. Com. Law.. | Hale's History of the Common Law, 1779. |
| Hallam, Const. Hist. .. | Constitutional History of England, by A. H. Hallam. |
| Halleck | Halleck's International Law, by Sir Sherston Baker, 2 vols., 1878. |
| Hawkins | Hawkins' Pleas of the Crown, 2 vols., 6th edition, 1777. |
| Heffter | Le Droit International de l'Europe, par A. G. Heffter, traduit par Jules Bergson, 1873. |
| Hough, Mil. Prec. .. | Precedents in Military Law, by W. Hough, Lieut.-Col. E.I.C.S., 1855. |
| Jur. (N.S.) | Jurist (new series). |
| L.J. (N.S.) | Law Journal (new series). |
| L.R., Ch. Div. | Law Reports, Chancery Division. |
| L.R., C.C.R. | Law Reports, Crown Cases Reserved. |
| L.R., Exch. | Law Reports, Exchequer. |
| L.R., H.L. | Law Reports, English and Irish Appeals (House of Lords). |
| L.R., P.C. | Law Reports, Privy Council Appeals. |
| L.R., Q.B. | Law Reports, Queen's Bench. |
| L.R., Q.B.D. | Law Reports, Queen's Bench Division. |
| Lewin, C.C. | Lewin's Crown Cases. |
| Lords' Journ. | Journals of the House of Lords. |
| Lord Raymond | Lord Raymond's Reports, 2 vols., 4th edition, 1792. |
| Man. & Gr. | Manning and Granger's Reports. |
| M. & S. | Maule and Selwyn's Reports, 6 vols., 1814-29. |
| M. & W. | Meeson and Welsby's Reports, 16 vols., 1837-49. |
| Mod. Rep. | Modern Reports, 12 vols., 5th edition, 1793. |
| Moo. C.C. | Moody's Crown Cases Reserved. |
| Phillimore | Commentaries upon International Law, by the Right Hon. Sir R. Phillimore, D.C.L., 1st edition, 3 vols., 1854. |
| Q.R. | The Queen's Regulations and Orders for the Army. |

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|--------------------------|----|---|
| Shower's Rep. .. | .. | Shower's Reports, 2 vols., 2nd edition, 1794. |
| Smith, Lead. Ca. | .. | Smith's Leading Cases, 6th edition, by Maude and Chitty, 1867. |
| Steph. Comm. .. | .. | Stephen's Commentaries on the Laws of England, 4 vols., 7th edition, 1874. |
| Steph. Dig. Crim. Law. | | Digest of the Criminal Law, by Sir James Fitzjames Stephen, K.C.S.I., 1877. |
| Steph. Dig. Ev. | .. | Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I., 3rd edition, 1877. |
| Stubbs, Constit. Hist... | | Constitutional History of England, by William Stubbs, M.A., Regius Professor of Modern History, Oxford, 1875. |
| Taunt. .. | .. | Taunton's Reports (Common Pleas, 1807-19), 8 vols. |
| T.R. .. | .. | Term Reports (Durnford and East) 4 vols., 1794-1809. |
| Vattel .. | .. | Le Droit des Gens, par Vattel, Paris, 1835. |
| W.R. .. | .. | Weekly Reporter (Irish). |
| Well. Desp. .. | .. | Wellington Despatches, 1838. |
| Wilson's Rep. .. | .. | Wilson's Reports. |

[The alterations made in the *Army Act* and in the *Rules of Procedure* since 1887, as well as in the edition of the *Manual* issued in that year, are denoted by black lines in the margin.]

PART I.

CHAPTER I.

INTRODUCTORY.

1. The object of the present work is to assist officers in acquiring information in respect of those branches of law with which they have occasion to deal in the exercise of their military duties.

Object of work.

2. Officers, as such, are concerned with the following laws:—

Description of laws with which officers have to deal.

1. Military Law.

2. The Law Relating to Riot and Insurrection.

3. The Customs, or, as they are usually called, the Laws of War.

3. Military law is the law which governs the soldier in peace and in war, at home and abroad. At all times and in all places, the conduct of officers and soldiers as such is regulated by military law. Military law is contained in the *Army Act* (a), supplemented by the *Rules of Procedure* made under its authority, and by the *Queen's Regulations*, and by *Army Orders*. The *Army Act*, which now fills the place of the *Mutiny Act* and *Articles of War*, is brought into operation annually by a separate statute. The *Army Act* is part of the *Statute Law* of England, and with the considerable difference that it is administered by military courts and not by civil judges, is construed in the same manner and carried into effect under the same conditions as to evidence and otherwise, as the ordinary criminal law of England (b). It must be recollected throughout this work that the statute law referred to is the law as enacted by the Parliament of the United Kingdom, while the "common law" is the law which has existed in England for centuries, independently of Acts of Parliament.

Description of military law.

(a) 44 & 45 Vict., c. 58. This Act repealed and re-enacted with some amendment the *Army Discipline and Regulation Act*, 1879, which had consolidated in one statute the *Mutiny Act* and *Articles of War*. The amendments made by the annual Acts from 1882 down to 1894 are incorporated with it.

(b) See *Army Act*, ss. 127, 128.

Ch. I.

—
Description
of law of
riot and
insurrec-
tion.

4. There is not in England, as in many foreign countries a special law defining the relations between the military and civil power in cases of riot and insurrection. Troops when called out to assist the civil power in these cases are under military law as soldiers, but they are also as citizens subject to the ordinary civil law of England to the same extent as if they were not soldiers. Their military character is superinduced on their civil character, and does not obliterate it. The rioters or insurgents are wholly under the ordinary civil law, and are in no respect subject to military law, or to the "customs of war." Troops employed against armed rioters are, it is true, rendered by the Army Act (a) subject to military law as if they were on active service, and the rioters were an enemy; but this enactment relates only to the government of the troops. The rioters are only an enemy while actually resisting, and when force ceases to be used, the rioters, whether prisoners or otherwise, must be tried or otherwise dealt with according to civil law. The law, then, of riot and insurrection is not necessarily part of the military education of an officer, except in so far as some knowledge of it is useful as a guide for his own conduct, when required by his military obligations to assist the civil power.

Description
of customs
or laws of
war.

5. The customs, or, as they are usually called, the laws of war, have effect only in the case of war. A commander of troops in time of war, and in occupation of a foreign country, or any part thereof, acts in two absolutely distinct capacities. First, he governs his troops by military law only; secondly, he stands temporarily in the position of governor of the country or part of the country which he occupies (b). In this latter capacity he imposes such laws on the inhabitants as he thinks expedient for securing, on the one hand, the safety of his army, and, on the other, the good government of the district which, by reason of his occupation, is for the time being deprived of its ordinary rulers.

Their scope
and object.

6. The law thus administered by an occupying general to the inhabitants has been rightly defined as the will of the conqueror, in the sense that the legality or illegality of the laws he imposes cannot be determined by any human court, and that no appeal to a court of law lies from his judgment; on the other hand, the practice of civilised nations has established certain rules to which officers are bound to conform in the administration of the territory which they occupy, and those rules are called the

(a) Army Act, s. 190.

(b) As to occupation, see ch. xiv, para. 44.

customs or laws of war. These customs or laws of war also lay down certain regulations (which are admitted to be binding between belligerents by virtue of international custom) as to the mode of conducting warfare and the necessary intercourse between combatant forces.

Ch. I.

7. In this manual the expression "customs of war" has been substituted advisedly for "laws of war." A law, to the mind of an Englishman, conveys the idea of a defined and rigid rule, which must be obeyed in all circumstances and at all risks, and the infraction of which involves a crime punishable by a legally constituted tribunal. The customs of war do not, with a very few exceptions, admit of being precisely defined. They consist of principles the enforcement of which must vary considerably, according to circumstances, and must in the case of a military occupation of territory, be subordinate to the safety of the occupying army. It seems expedient, then, to avoid any confusion of ideas, by confining the word "law" to the military law contained in the Army Act, and to the ordinary civil law relating to riot and insurrection; and to use "customs" as applicable to the more elastic rules which constitute the practice, so to speak, of civilised nations in war (a).

Expression
"customs"
preferable
to "laws."

8. Such being the laws and customs which this book professes to explain, it may be well to state shortly how it deals with these several subject matters.

Arrange-
ment of
contents of
book.

9. This introductory chapter is followed by a chapter giving a short history of military law from the time of the Conquest down to the passing of the Army Act. It is hoped thus to show clearly the principles of English law applicable to the government of the army, and the steps by which the necessity for a statutory power to maintain discipline in the army in time of peace, led gradually to the substitution in time of war of Articles of war, issued under the authority of the Mutiny Act, for Articles of war issued under the prerogative power of the Crown.

Chapters I,
II.

10. The third, fourth, and fifth chapters are occupied with an explanation of the disciplinary provisions of the Army Act, and of the procedure by which these provisions are enforced.

Chapters
III, IV, V.

11. Military courts follow the law as to the admission and rejection of evidence which is in force in civil courts in England. The sixth chapter, therefore, contains a summary of the law of evidence as administered in ordinary criminal trials in England. The seventh chapter gives a summary of the English criminal law so far as it is appli-

Chapters
VI, VII.

(a) These are quite distinct from the "custom of war," referred to in the old Mutiny Act and Articles of War, in which the expression meant the custom of the service.

Ch. I.

cable to members of the army. This chapter is necessary, inasmuch as most ordinary civil crimes, when committed by persons subject to military law are cognisable by military courts at all times, and all of them are so cognisable when committed on active service, or out of Her Majesty's dominions, or in parts of Her Majesty's dominions out of the United Kingdom, and at a distance from any competent criminal court.

Chapter
VIII.

12. Military courts and individual officers are in respect of acts which are illegal or in excess of their jurisdiction, subject to the control of the superior civil courts. The eighth chapter is framed with a view of indicating to officers the extent of jurisdiction which they are entitled to exercise either as members of courts-martial, or individually, and the circumstances and mode in which their acts may be called in question. It is intitled "Powers of Courts of Law in relation to Courts-martial and Officers."

Chapters
IX, X, XI.

13. Parts II and III of the Army Act are concerned with "Regulation" in contradistinction to "Discipline," which forms the subject of Part I. These two parts—the one, Part II, relating to Enlistment, the other, Part III, relating to Billeting and Impressment of carriages—are dealt with in the ninth, tenth, and eleventh chapters; and occasion is taken to give there a sketch of the history, and of the constitution, of the Forces, with the view of assisting officers desirous of studying the subject.

Chapters
XII, XIII,
XIV.

14. Officers and soldiers have certain privileges in relation to the mode of making their wills, exemption from tolls and serving on juries, and otherwise. These are explained in the twelfth chapter. The scope and object of the thirteenth and fourteenth chapters, intitled "Summary of the Law of Riot and Insurrection" and "Customs of War," have been already stated at sufficient length. These fourteen chapters constitute Part I of the work.

Army Act
and Rules.

15. Part II consists of the Army Act and Rules of Procedure made under it, which are printed with notes, and are followed by the rules for summary punishment, some forms, &c., relating to courts-martial, and the Order in Council relating to discipline on board ship. Part III comprises some miscellaneous enactments, regulations, and forms relating to the Army.

Marines.

16. As will be seen hereafter, the Royal Marines, who formerly when not borne on the books of any of Her Majesty's ships, were governed by a Mutiny Act passed for them annually, have now been made subject, when not on the books of a Queen's ship, to the Army Act.

Explanation
of expres-
sion "mar-
tial law,"

17. It remains to remark that no mention has been made of martial law. The reason is that martial law,

as distinguished from military law and the customs of war, is unknown to English jurisprudence. The intermediate state between war and peace, called by continental writers a state of siege, does not exist in English law, which never presupposes the possibility of civil war, and is silent as to such a condition of things (a). Within the United Kingdom, peace always exists in contemplation of English law, and the disturbers of that peace are considered guilty, according to the gravity of their offences, of misdemeanours, felonies, or treason, and punishable with fine, imprisonment, penal servitude, or death (b). True it is that what is called martial law has been in former times proclaimed against disturbers of the public peace in England, but such a proclamation in no degree suspended the ordinary law, or substituted any other kind of law in its stead, and amounted to no more than an authoritative announcement of the existence of a state of things in which force would be used against wrong-doers for the purpose of protecting the public peace.

Ch. I.

18. The origin of the misuse of the expression "martial law," as implying a state of things in which Englishmen in time of peace are subject to some other law than the ordinary law, will probably be found in the illegal attempts made in the arbitrary times of our history to apply military law to the civil population: for in those days a proclamation of martial law would have the significant effect that

Origin of
misuse of
expression.

(a) See Dicey, *Law of the Constitution*, 2nd edition, p. 296. Martial Law has been at times established in Ireland, but only for a limited time under temporary Statutes. See 29 Geo. III, c. 11 (1799) Irish Parliament; and the Imperial Acts, 43 Geo. III, c. 117 (1803); 3 & 4 Will. IV, c. 4 (1833).

(b) The expression "martial law" is identical with military law (Hale, *Hist. of the Common Law*, 4th edn., p. 34). In modern writers it is usually used in the sense of the laws of war or the exercise of force in case of rebellion. See Simmons on Courts Martial, 7th edn., p 1 notes (1) & (2), p. 49 (1). Halleck says in respect of martial law in the latter sense—

"In the jurisprudence of France three conditions of things are carefully defined and provided for: 1st. The state of peace where all persons are governed by the civil or military authority according to the class to which they belong, and the law applicable to the particular case; 2nd. The state of war, where the law and authority governing depend upon the particular condition of the place and circumstances of the case, the civil authority sometimes acting in concert with and sometimes in subordination to the military; and 3rd. The state of siege, where the civil law is suspended for the time being, or, at least, is made subordinate to the military, and the place is put under martial law, or under the authority of military power. This may result from the presence of a foreign enemy, or by reason of a domestic insurrection, and the rule applies to a district of country as well as to a fortress or city. A similar system is adopted in Spain and in most of the countries of Continental Europe. The state of siege of the Continental jurists, says Cushing, is the proclamation of martial law of England and the United States, only we are without law on the subject, while in other countries it is regulated by known limitations." *International Law*, edn. of 1878, i, p. 499.

Ch. I.

military, or, as it was then called, martial, law, would be substituted for the ordinary law as respects the disturbers of the public peace; in other words, that the rioters when captured would be tried and punished by military tribunals and not by civil tribunals. Such a state of things has never existed by law in England, although a restricted power of trying by military tribunals offenders against the public peace in Ireland has on several occasions been created by Act of Parliament (a). By English law those persons only can be tried by courts-martial who are by the Army Act declared to be subject to military law (b).

(a) See the Acts cited in note (a), p. 5.

The proclamations set forth in the rebellion of 1715 (Clode, *Mil. Forces*, ii., p. 655), and the rebellion of 1745 (*Ib.*, 657), and the riots of Lord George Gordon (*Ib.*, 659), and in the Irish rebellion of 1798 (*Ib.*, 661), in no case proclaim a state of martial law as against peaceable subjects, but merely justify the use of arms against the rebellious subjects; and in every case these proclamations would seem to have been followed by Acts of Indemnity (*Ib.*, 163-173).

The authorities on this subject are a Treatise on Martial Law, by W. F. Finlason (which takes an opposite view to that expressed in this note); Clode, *Mil. Forces*, ii., ch. xviii.; Halleck, *International Law*, i., p. 499; Dicey, *Law of the Constitution*, 2nd edn., pp. 296-303. *Phillips v. Eyre*, *Law Reports*, 4 Q. B. 225. The above note is in accordance with the following extract from a dispatch of the Duke of Newcastle, written in reference to an Indemnity Act passed by the Legislature of St. Vincent in 1862, for the purpose of indemnifying the Governor against the consequences of a proclamation of martial law.

"The first clause declares the proclamation of martial law to have 'been lawfully issued,' but this is not the fact, and ought not to have been so declared. In proclaiming martial law, the executive authority in fact declares itself obliged, for the protection of the community, to neglect law, trusting to the Legislature to relieve all who, in obedience to the constituted authority, may have acted in defence of the public safety, from the consequences of having acted unlawfully. The proclamation was right and necessary, but it was not strictly 'lawful.'" Clode, *Mil. Forces*, ii., p. 511.

(b) The only apparent exception is mentioned in ch. xiv., par. 47.

Mr. Dicey, in his valuable work "On the Law of the Constitution," published since the issue of the first edition of this work, after stating that "Martial Law in the proper sense of that term, in which it means 'the suspension of ordinary law and the temporary government of a country or parts of it by military tribunals, is unknown to the Law of England,'" proceeds to say that the assertion that no such thing as martial law exists under our system of government, though perfectly true, will mislead anyone who does not attend carefully to the distinction between two utterly different senses to which the term "Martial Law" is used by English writers; and then he explains that "Martial Law is sometimes employed as a name for the Common Law 'right of the Crown and its servants to repel force by force, in the case of invasion, insurrection, or riot, or generally of any violent resistance,'" and, if used in that sense, he adds that this right or power is essential to the very existence of orderly government, and is most assuredly recognised in the most ample manner by the law of England. It is a power which has in itself no special connection with the existence of an armed force. The Crown has the right to put down breaches of the peace. *Infra*, ch. xiii., para. 12 *et seq.*

CHAPTER II.

HISTORY OF MILITARY LAW.

1. Military law, as distinguished from Civil law, is the law relating to and administered by military courts, and concerns itself with the trial and punishment of offences committed by officers, soldiers, and other persons (*e.g.*, sutlers and camp followers) who are from circumstances subjected, for the time being, to the same law as soldiers. This definition is to a great extent arbitrary, the term "military law" being frequently used in a wider sense, to include not only the disciplinary, but also the administrative law of the army, as for instance, the law of enlistment and billeting. In this chapter, however, the term is used only in the restrictive sense above mentioned.

Definition
of military
law.

2. The object of military law is to maintain discipline, among the troops and other persons forming part of or following an army. To effect this object, acts and omissions which are mere breaches of contract in civil life—*e.g.*, desertion or disobedience to orders—must, if committed by soldiers, even in time of peace, be made crimes, with penalties attached to them; while, on active service, any act or omission which impairs the efficiency of a man in his character of a soldier must be punished with severity.

Object of
military
law.

3. In the early periods of our history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the Constable, or of the Peers, and other experienced persons; or were enacted by the Commander-in-Chief in pursuance of an authority for that purpose given in his commission from the Crown (*a*). These Ordinances or Articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of

Military
law in early
times consisted
of
Articles of
War issued
when war
broke out.

(a) Grose, *Mil. Antiquities*, ii., p. 58. See Commission in Rymer's *Fœdera*.

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Government of troops in time of war by Articles of War.

Account of early Articles of War.

Severity of early Articles.

peace. Military law, in time of peace, did not come into existence till the passing of the first Mutiny Act in 1689.

4. The system of governing troops on active service by Articles of War issued under the prerogative power of the Crown, whether issued by the King himself or by the Commander-in-Chief or other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of annual Mutiny Acts (*a*), and did not actually cease till the prerogative power of issuing such articles was superseded, in 1803, by a corresponding statutory power (*b*).

5. Numerous copies of these Articles are in existence, made on the occasions of the various wars, both foreign and domestic, in which England was from time to time involved. The earliest complete code seems to have been the "Statutes, Ordinances, and Customs" of Richard II, issued by him to his army in the ninth year of his reign (1385); and probably on the occasion of the war with France (*c*). These are followed by the statutes of Henry V, made by him during his conquest of France (*d*). Domestic dissensions gave occasion for the orders for the English army promulgated by Henry VII, before the battle of Stoke (*e*); and in the Great Rebellion the King and the Parliamentary leaders alike governed their troops by Articles of War. On the side of the Crown, Articles or Ordinances of War, as they were then called, were established by the Earl of Northumberland, in 1639, for the regulation of the army of Charles I; whilst, in 1642, Lord Essex, the leader of the Parliamentary forces, under authority given by an ordinance of the Lords and Commons, put forth Articles of War almost in the same language as the Royal Articles of War (*f*). Articles of War were also issued by Charles II in 1666, when the French war was declared, and in 1672, upon the outbreak of the Dutch war; and by James II in 1685, on the occasion of Monmouth's rebellion (*g*).

6. The earlier Articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed somewhat the shape which they bore in modern times, and the Ordinances or Articles of War issued by Charles II in 1672 formed the ground-work of the Articles of War issued in 1878, which were consolidated with the Mutiny Act in the Army Discipline and

(*a*) See *Barvis v. Keppel*, 2 Wilson's Rep. 314.

(*b*) See Mutiny Act of 1803 (43 Geo. III. c. 20).

(*c*) See copy printed in Grose, *Mil. Antiquities*, ii. pp. 64 *et seq.*

(*d*) Grose, *Mil. Antiquities*, ii. p. 69.

(*e*) Grose, *Mil. Antiquities*, ii. p. 70.

(*f*) See these Articles set out in Clode, *Mil. Forces*, i. App. vi. and viii.

(*g*) Clode, *Mil. and Martial Law*, pp. 31-42. As to Articles of War by Will. III. see Clode, *Mil. Forces*, i. p. 503; and by Anne, 2 & 3 Anne, c. 13.

Regulation Act of 1879, now replaced by the Army Act (a). Ch. II.

7. Attempts were made from time to time, especially during the despotic reigns of the Tudors, to enforce military law under the prerogative of the Crown in time of peace; but no countenance was afforded to such attempts by the law of England; and commissions for the execution of military law in time of peace issued by Charles I in 1625 and the following years gave rise to the declaration in 1627, contained in the Petition of Right (3 Cha. I. c. 1), that such an exercise of the prerogative was contrary to law (b). The law having been thus declared, the question of the legality of the Articles of War issued in 1639 came under the notice of the Council Board in July, 1640, and the lawyers and judges were all of opinion that martial law could not be executed in England "but when an enemy is really near to an army of the King's" (c). So, again, it was stated in Parliament by Mr. Secretary Coventry that the articles of 1672 were only to be executed abroad (d), and the operation of the Articles of 1685 was limited to the duration of Monmouth's rebellion (e). In short, the only direct assistance in the enforcement of military discipline given by the law before the passing of the first Mutiny Act was afforded by certain statutes enforceable before civil and not before military tribunals, which made desertion punishable as a felony (f).

Illegal attempts to enforce military law in time of peace.

8. The origin of later military courts is to be found in the Court of Chivalry, the ordinary judges of which were the Constable, or Lord High Constable, who was originally the King's General; and the Marshal, or Earl Marshal, whose duty it was to marshal the army, and to ascertain whether the persons liable to serve the King in his wars fulfilled their services (g).

Court of Chivalry—the origin of military courts.

(a) A comparison of the ancient with the more modern Articles of War will show how slight are the changes which have been made in military law during a series of years. It is easy to trace in the Articles of Richard II. the germ of the Articles of 1878, and having regard to the changes in custom and manners, the difference in the character of the regulations is less than might have been expected.

(b) See extract from the Petition of Right printed below, p. 783.

(c) Clode, *Mil. Forces*, i. p. 23, and App. vii.

(d) Cobbett's *Parl. Hist.*, iv. 619.

(e) Clode, *Mil. Forces*, i. p. 79, and App. xxiv.

(f) 18 Henry VI. c. 19 (1439), made it a felony for a soldier to leave his captain and the King's service without licence. 7 Henry VII. c. 1 (1490), repeated by 3 Henry VIII. c. 5 (1511), provided that if a soldier immediately retained by the King departed out of the King's service without licence of his captain, it should be deemed to be felony. See *The Case of Soldiers*, Coke's Reports, part vi. p. 277 (43 Eliz.), which decided that the first Act was obsolete, but that the second and third were perpetual. See p. 222, note (c); see also 2 & 3 Edward VI. c. 2 (revoked by 4 & 5 Phil. & Mar. c. 3), which imposed punishments on soldiers furnished at the cost of others, for making away with their horses, and made their departure from service without licence punishable as felony, and provided also for the punishment of officers improperly discharging soldiers.

(g) See an account of the duties of the Constable and Marshal, in

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Constitution of Court of Chivalry.

9. The Court of Chivalry formed part of the *Aula Regia*, or Supreme Court established in England by William the Conqueror. The *Aula Regia* was a Court in a double sense : first, in the sense of being composed of the great officers of State ; and secondly, in the sense of being a judicial body, as each of the great officers had judicial authority over the officers and persons belonging to or having dealings with his department. In this division of jurisdiction the Constable, or *Comes Stabuli*, or Master of the Horse (to use the modern designation), was Commander-in-Chief of the army, and had allotted to him the army, and all persons and matters connected therewith ; while he and the Marshal together constituted the Court of Chivalry which exercised both civil and criminal jurisdiction (*a*).

Civil jurisdiction of Court of Chivalry.

10. Its civil jurisdiction was that of a court of honour and consisted in redressing injuries of honour, and correcting encroachments in matters of coat armour, precedence, and other distinctions of families. It also exercised jurisdiction in respect of contracts connected with war out of the realm, and in this respect gradually infringed on the jurisdiction of the ordinary courts, until such infringements were restrained, and the powers of the court were defined, by two Acts passed in the reign of Richard II. The first of these (8 Rich. II. c. 5, 1384) enacted, "that all pleas and suits touching the common law of the land, and which ought to be examined and discussed by the common law, shall not hereafter be by any means drawn or holden before the Constable and Marshal, but that the court of the said Constable and Marshal shall have that which belongeth to the said court;" while the second (13 Rich. II. stat. 1, c. 2, 1389) declared the jurisdiction of the court to consist in the "cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch arms or war within the realm which cannot be determined nor discussed by the common law, with other usages and customs to the same matters pertaining."

Criminal jurisdiction of Court of Chivalry.

11. The criminal jurisdiction of the Court, except in time of war, was confined to the punishment of murder and other civil crimes committed by Englishmen in foreign lands (*b*). In time of war, however, its jurisdiction was extended, and the court, which was more usually called the Court of the Constable, acquired somewhat of the

Stubbs, *Constit. Hist. of England*, i. p. 354, notes 1 & 2. See also Grose, *Mil. Antiquities*, i. chapter 7.

(*a*) See as to the jurisdiction of the Court of Chivalry, Coke 1 Inst. 746 ; 4 Inst. 127 ; Bac. Abr. 5th edn., ii. p. 141 ; Hale, *Hist. of the Common Law*, p. 40 ; Comyn's Digest, iii. p. 331 ; Christian's Blackstone, 14th edn., iv. p. 267.

(*b*) The Court seems to have infringed on the jurisdiction of the ordinary criminal courts as well as on that of the ordinary civil courts, and such infringement was restrained by statute in 1391 (1 Henry IV. c. 11).

character of a permanent court-martial, as it followed the march of the army, and punished summarily, and in accordance with the Articles of war for the time being in force, all offences committed by the troops.

12. Such being the jurisdiction of the Court, it is obvious that it must from time to time have been necessary, as, for instance, in case of simultaneous military operations in different quarters, to provide for its exercise at different places at the same time, and consequently by different persons; and accordingly we occasionally find several Constables and Marshals holding office and exercising jurisdiction at the same time. It is not quite clear whether the several Constables and Marshals from time to time appointed exercised judicial functions in the administration of military law merely by virtue of their offices, or by virtue of special commissions from the Crown. Probably the power to administer such law was chiefly conferred by commissions (*a*), and the administration of military law was thus less affected than would otherwise have been the case by the extinction of the office of High Constable, as a permanent office, in the 13th year of the reign of Henry VIII (1521).

13. In that year the office, which had in accordance with the general tendency of the great offices of state in early times, become hereditary in the family of the Bohuns, Earls of Hereford and Essex, was forfeited to the Crown on the attainder and execution of Edward, Duke of Buckingham, the then High Constable, and since that time a High Constable has never been appointed permanently, but only on occasion of coronations and like ceremonies (*b*). The office of Earl Marshal, on the other hand, long continued to be held only by grant from the Crown, and did not become hereditary till the 25th year of the reign of Henry VIII, when it was granted to Thomas Howard, Duke of Norfolk, and his heirs male, in which line it still continues.

14. This change seriously affected the ordinary jurisdiction of the Court of Chivalry (*c*); but does not seem to

(*a*) Hale says (Hist. of the Common Law, p. 40), "The Military Court held before the Constable and Marshal antiently, as the *Judices Ordinarii* in this case, or otherwise before the King's Commissioners of that jurisdiction as *Judices delegati*." See also Bac. Abr., ii. p. 152; and as to the appointment of Constables and Marshals, Grose, Mil. Antiquities, i. pp. 191 and 192. Rymer's *Fœdera*, annis 1399, 1400, and elsewhere.

(*b*) Coke, 1 Inst., 74*b*; 4 Inst. 127. Grose, Mil. Antiquities, i. p. 190.

(*c*) See Coke, 1 Inst., by Hargrave and Butler, 74*b*, note (1). The Earl Marshal undoubtedly exercised the civil jurisdiction of the Court of Chivalry for a long time after the extinguishment of the permanent office of the Constable. See as to the jurisdiction of the Earl Marshal's Court, a letter to Sir John Somers, Attorney-General, from Robert Plot, LL.D., Hearne's *Curious Discourses*, ii. p. 250. See also the case of *Oldis v. Doveville*, Shower's *Cases in Parliament*, p. 58. The last commission to the High Constable to act as a criminal judge was issued

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Administra-
tion of
military
law by
Court of
Chivalry.

Extinction
of office of
High
Constable.

Administra-
tion of
military
law by

Ch. II. have materially affected the administration of military law, which was subsequently provided for (as had probably been the case before the extinction of the office of High Constable), by commissions from the Crown, or by clauses inserted in the commissions of the Commanders-in-Chief authorizing them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose (a). These deputies consisted of officers, and out of their sittings there gradually arose a new form of military tribunal, under the denomination of a Court or Council of War, which sat at stated times under an officer of a certain rank, who was styled the President.

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Virtue of
Commissions.

Councils of
War.

Courts-
martial.

15. The transition from a Council of War to Courts-Martial in their present form was a matter more of name than of substance. The exact time at which courts-martial under that name began to be held is not ascertained, but they are mentioned with the distinction of general and regimental courts-martial in the Articles of War issued on the outbreak of the Dutch War, in 1672, by Prince Rupert, as Commander-in-Chief, under the authority of a commission from Charles II (b). There was this difference between the earlier courts-martial and the military courts-martial of the present day, that in the earlier courts the general or governor of the garrison who convened the court ordinarily sat as President, and that the power of the Court was plenary, and their sentences were carried into execution without the confirmation required under the present law.

Military
code in time
of peace
rendered
necessary
by establish-
ment of
standing
army.

16. Before the establishment of a standing army no necessity existed for a military code in time of peace; but when, after the Restoration in 1660, such a force was established, the necessity of special powers for the maintenance of discipline began to be felt. The growth of the army was, however, always regarded with jealousy, and Parliament was therefore unwilling to confer such powers on the Crown until it became absolutely necessary to do so. The small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II and James II, were tolerated rather than sanctioned by Parliament, and were therefore governed without such

by Charles I. in 1631, upon an appeal of treason brought by Donald, Lord Rae, against David Ramsay, Esq., for treasonable words and purposes. In this Court the accused was entitled to wager of battle; but on further reflection the King withdrew his commission and the duel was never fought. See Thomson, *Mil. Forces of Great Britain and Ireland*, pp. 38, 39. The Court of Chivalry has never been abolished by law. In consequence of an appeal of death in 1818, the wager of battle was shortly after abolished by law. *Ashford v. Thornton*, 1 Barn. and Ald., p. 405.

(a) Grose, *Mil. Antiquities*, ii. p. 60, *et seq.*

(b) See Code printed in 1886 by the Royal Commission on Recruiting the Army, *Parl. Papers*, 1886.

powers, and rather as the retainers of a great man than as an army. For though in 1662 Charles II issued Articles for the government of his guards and garrisons, offences involving the penalty of death were expressly reserved for trial by the known laws of the land, or by special commission under the Great Seal by the advice of the judges and lawyers. Again, the Articles issued by James II in 1686, which provided for the punishment of offences by courts-martial, expressly prohibited the infliction of any punishment amounting to loss of life or limb in time of peace (a). Discipline, therefore, was naturally lax; and when on the accession of William and Mary the maintenance of the army was sanctioned by Parliament, the loose discipline and general disaffection prevalent among the troops led to special powers being granted for their coercion.

17. On the 1st March, 1689, in a debate in the House of Commons on a message from William and Mary, suggesting the suspension of the Habeas Corpus Act, the necessity was urged of a measure for the regulation of the army (b), and on the 13th leave was given to bring in a Bill to punish mutineers and deserters from the army for a limited time, and a committee was appointed to prepare it (c). Almost at the same time 800 men enlisted by James II, who had been ordered by William to embark for Holland, mutinied at Ipswich, and marched northward, declaring that James was their king, and that they would live and die by him; and this danger, which was reported to both houses on the 15th March (d), doubtless facilitated the passing of the Bill, which was introduced into the House of Commons on the 18th, and having passed through all its stages by the 28th, was passed by the House of Lords on the same day, and received the Royal Assent on the 3rd April (e).

18. This Bill, which is known as the first Mutiny Act (1 Will. & Mary, c. 5), was prefaced by a preamble declaring the necessity for and the objects of the Act in terms which were repeated without substantial alteration in each subsequent Mutiny Act until the year 1878, and have now been transferred to the preamble of the annual Act bringing the Army Act into force (f). Mutiny and deser-

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Occasion of
passing of
first Mutiny
Act.

Objects and
scope of
first Mutiny
Act.

(a) Memorandum by Mr. Clode.

(b) Cobbett's Parl. Hist., v. pp. 154, 155.

(c) 10 Comm. Journ., 47.

(d) Cobbett's Parl. Hist., v. pp. 129-182.

(e) 10 Comm. Journ., 49, 52, 53, 64, 67, 69; 15 Lord's Journ., 164, 165.

(f) This preamble emphatically states: (1) That the raising or keeping a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law. (2) That no man can be fore-judged of life or limb, or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of the realm.

Ch. II. tion when committed by persons in their Majesties' service in the army were made punishable by death or such other punishment as by a court-martial should be inflicted. Power was given to their Majesties or the general of their army to grant commissions for summoning courts-martial for punishing such offences, and it was further provided that the Act should not extend to the Militia, and should not exempt any officer or soldier from the ordinary process of law. The duration of the Act was limited to seven months, from the 12th April, 1689, to the 10th November in the same year.

Second Mutiny Act. 19. On the 19th October, 1689, Parliament re-assembled, and a second Mutiny Act (1 Will. & Mary, sess. 2, c. 4) was passed during the session, which received the Royal Assent on the 23rd December, and was ordered to come into force on the 20th, so that an interval of more than a month occurred between the lapse of the first and the coming into force of the second Act (a).

Succession of Mutiny Acts till 1878. 20. Successive Mutiny Acts, with the exception of certain short intervals, were subsequently passed annually from the year 1690 to the year 1878 (b).

Periods in Mutiny Act worthy of observation. 21. To indicate in detail the changes which took place in the various Mutiny Acts from the first in 1689 to the termination of the series in 1879, on the passing of the Army Discipline and Regulation Act, would be out of place in the present work; but it may be useful to point out the various periods, so to speak, in military legislation, and the principal changes which took place from time to time, until military law assumed the form which it bears in the Army Act.

From 1689 to 1712. 22. The first period lasted till 1712. During this period the Mutiny Acts did not extend to the Queen's dominions abroad (c), and the principal offences punishable under them were mutiny and desertion; but no difficulty was felt from the narrow extent of the statutory provisions,

(a) Copies of the Mutiny Acts to the end of the reign of Anne will be found in the Record Edition of the Statutes. A copy of the first Mutiny Act will also be found in Clode, *Military and Martial Law*, Appendix A, p. 182; *Mil. Forces*, i. p. 499; also in Grose, *Mil. Antiquities*, ii. p. 73.

(b) The Mutiny Act of 1690 expired on the 20th December, 1691, and the next Act passed on the 14th March, 1692, but it was ordered to be in force from the 10th of that month. The Act of 1694 expired on the 1st March, 1695, but was continued in force from the 10th April, 1695, to the 10th April, 1696, by an Act passed on the 22nd April, and having therefore a retrospective operation. Again, there was a lapse from the 10th April, 1698, to the 20th February, 1702, Grose, i. p. 64; and the Record Edition of the Statutes. See also table in Clode, *Mil. Forces*, i. pp. 389-391. The authorities for the statements as to the Mutiny Acts are an analysis of these Acts prepared by Mr. W. L. Selfe (now Judge Selfe), of Lincoln's Inn, and a memorandum by Mr. Clode on the Articles of War and Mutiny Acts.

(c) The Act was extended to Ireland in 1702 (13 & 14 Will. III. c. 2), and to Scotland in 1707 (7 Anne, c. 4.)

inasmuch as the nation was at war during almost the whole period, and the main body of the army was in consequence on active service, and was governed by Articles of War issued by the Crown in pursuance of the prerogative.

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23. From 1698 to 1702 the nation was at peace, and the Mutiny Act was allowed to drop. The greater part of the army was disbanded at the same time, and though the King was allowed by statute (10 Will. III. c. 1) to maintain 7,000 troops in England and 12,000 in Ireland, no special powers were conferred upon him for their government.

Lapse of Mutiny Act from 1698 to 1702 in time of peace.

24. On the renewal of hostilities in 1702, the Mutiny Act was revived, and extended to Ireland; and in the next year clauses were added for the better enforcement of discipline abroad, which provided that certain offences committed abroad should be triable in England as treason or felony. These clauses, however, were accompanied by a proviso saving the power of the Crown to make Articles of War and constitute courts-martial and inflict penalties by sentence or judgment of the same beyond the seas in the time of war and by a clause empowering the Crown to grant commissions for holding courts-martial within the realm, by which persons committing crimes out of the realm against the Articles of War, and not tried by courts-martial before their return, might be tried and punished according to the Articles of War (a).

Renewal of Act in 1702.

25. On the conclusion of the Peace of Utrecht in 1712, the Mutiny Act was again allowed to expire, and was replaced by an Act "for better regulating the forces to be maintained in Her Majesty's service," by which mutiny, desertion, and certain other offences were made punishable by such punishments as a court-martial should adjudge, not extending to life or limb; power being at the same time given to inflict by sentence of court-martial corporal punishment not extending to life or limb, on soldiers for immoralities, misbehaviour or neglect of duty. The operation of this Act was restricted to Great Britain and Ireland; but at the same time the difficulty was felt of maintaining discipline amongst the troops in the colonies and elsewhere out of the kingdom, as the prerogative power of governing such troops by Articles of War had been suspended by the conclusion of peace. A statutory power was therefore given to the Crown to make Articles of War and constitute courts-martial in any of Her Majesty's dominions beyond the seas, or elsewhere beyond the seas, "in such manner as might have been

Power to make Articles of War binding on the army in time of peace when out of the Kingdom, conferred by Mutiny Act of 1712.

(a) 13 & 14 Will. III. c. 2; 1 Ann. stat. 2, c. 20 (c, 16 in Ruffhead).

Ch. II. done by Her Majesty's authority beyond the seas in time of war" (a).

Power
extended by
Mutiny Act
of 1715.

26. On the breaking out of the rebellion in 1715, difficulties arose in maintaining discipline among the troops serving in the kingdom. For though troops serving elsewhere in the dominions of the Crown might be dealt with under statutory Articles of War, which could impose death for the most serious military offences, the troops in the kingdom were under a different law. The then existing Mutiny Act (b), by imposing a punishment for the most serious military offences, had superseded the prerogative power of making Articles of War in respect of those offences, though committed by troops engaged in war by reason of the rebellion, but as the punishment under the Act was not to extend to life or limb, it was insufficient to maintain discipline. Accordingly an Act was passed in 1715 (c), reimposing the punishment of death for mutiny, desertion, and the offence now known as fraudulent enlistment, in Great Britain and Ireland, and conferring on the Crown statutory power to make "Articles for the better government of His Majesty's forces, and inflicting penalties to be proceeded upon to sentence or judgment in courts-martial to be constituted pursuant to this Act."

Mutiny Act
of 1718.

27. Subsequently (d), the two powers of making Articles of War for the troops in the kingdom and for those in the other dominions of the Crown were combined, and in the Act of 1718 (e) received the form which was retained until 1803. The Act of 1718 conferred on the Crown a power to make Articles of War and constitute courts-martial with power to try offences under such Articles, and inflict penalties by judgment of the same, "as well within the kingdoms of Great Britain and Ireland, as in any of His Majesty's dominions beyond the seas." The Articles of War made under the Act of 1712 and subsequent Acts not being limited to the time of war, applied to the troops also in time of peace.

Extension
of Mutiny
Act in
Colonies.

28. At about the same time the provisions of the Mutiny Act, which enacted death or corporal punishment for mutiny, desertion, and other specified offences, and which had previously been restricted to offences committed in Great Britain or Ireland, were extended to some of those offences if committed in His Majesty's dominions abroad, and to others wherever committed (f); and the Act and

(a) 12 Ann. c. 13, in the Record Edition of the Statutes (c. 12 in Ruffhead).

(b) 1 Geo. I. stat. 2, c. 3.

(c) 1 Geo. I. stat. 2, c. 9.

(d) 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2.

(e) 4 Geo. I. c. 4.

(f) Compare 1 Geo. I. stat. 2, c. 34; 3 Geo. I. c. 2; 4 Geo. I. c. 4; 9 Geo. I. c. 4,

statutory power were subsequently re-enacted annually in this form, without material alteration, until 1802 (a). Ch. II.

29. By these successive changes the Crown gradually acquired a complete statutory power for the government of the army in time of peace, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the prerogative power of governing troops serving in foreign countries in time of war by means of Articles of War made under the prerogative; and as further dominions abroad were gradually acquired, the Act and statutory Articles were from time to time extended, so as to provide for the enforcement of discipline among the garrisons maintained in such dominions (b). The Act and statutory Articles were not, however, extended to foreign countries, as it was still assumed that the army never could be in a foreign country except in time of war, and troops engaged in active service in such countries were governed as before by the prerogative Articles.

Power to govern by Act and statutory Articles in Kingdom and colonies in time of peace co-extensive with power to govern by prerogative Articles in foreign countries in time of war.

30. That this was so is clear from the case in 1761 of *Barwis v. Keppel* (c), in which the Court of King's Bench decided that neither the Mutiny Act nor the Articles of War made thereunder, applied to the army when engaged in war abroad. It seems probable, however, that the Articles issued under the prerogative which governed the army when so engaged were the same in form as the statutory Articles which governed the army at other times, and hence arose the question decided in the negative in the case referred to, as to whether the Mutiny Act and statutory Articles extended to the army when engaged in war in foreign countries.

Case of *Barwis v. Keppel*.

31. In 1803, by 43 Geo. III. c. 20, the great change was made of extending the Mutiny Act and the statutory Articles of War to the army whether within or without the dominions of the Crown. This alteration also was made on the occasion of a peace—the Peace of Amiens—and was made, as appears from the preamble to the Act, in order to provide for the government of the troops

Extension of Mutiny Act and statutory Articles to foreign countries in 1803.

(a) In 1781 (21 Geo. III. c. 8) the provisions of the Act enacting punishments for certain offences were extended to the specified offences wherever committed; but the power to constitute courts-martial was still restricted to the Kingdom and the dominions of the Crown abroad.

(b) The Act and Articles were extended to the Channel Islands in 1756-7 (30 Geo. II. c. 6), and to the Isle of Man in 1766 (6 Geo. III. c. 8); and in 1767 (7 Geo. III. c. 10) special provisions were made as to the constitution of courts-martial in the garrisons of Goree and Senegal, and detachments therefrom. Ireland was excluded from the operation of the Act, but not of the Articles, in 1781 (21 Geo. III. c. 8), a separate Mutiny Act for that country being passed in that year by the Irish Parliament (21 & 22 Geo. III. c. 43 (1)); but it was again included after the Union.

(c) 2 Wilson's Reports, 314.

(M.L.)

Ch. II. engaged in the late war who had not yet been brought home, and who could no longer be governed by prerogative Articles, the power of making such Articles having been suspended on the conclusion of peace.

Prerogative Articles finally superseded.

32. On the resumption of hostilities, the Act and statutory Articles might have been again restricted in their operation to the dominions of the Crown, and the troops engaged in foreign war might have been left to be governed as before by prerogative Articles. This course, however, was not adopted, but the Act and statutory Articles were applied in 1813 towards the close of the Peninsular War to the troops without as well as to those within the dominions of the Crown (a); and the prerogative power of making Articles of War in time of war was thus finally superseded by a statutory power. The law as then settled has been continued ever since, and the army, both in peace and war, was governed by the Mutiny Act and statutory Articles until the year 1879.

Army Discipline and Regulation Act, 1879.

33. This brings us to the Army Discipline and Regulation Act, 1879. The inconvenience of having a military code contained partly in an Act of Parliament and partly in Articles of War made under and deriving validity from that Act had long been felt, and led at length to the consolidation of the provisions of the Mutiny Act and Articles of War in one statute.

Army Act, 1881.

34. Two years later the Army Discipline and Regulation Act, 1879, was repealed, and re-enacted with some amendment in the Army Act of 1881.

Thus has been accomplished, after the lapse of more than a century, a wish expressed by Mr. Justice Blackstone in his Commentaries, "That it might be thought "worthy the wisdom of Parliament to ascertain the "limits of military subjection, and to enact express "Articles for the government of the army" (b).

Annual Acts.

35. The Army Act has of itself no force, but requires to be brought into operation annually by another Act of Parliament, thus securing the constitutional principle of the control of Parliament over the discipline requisite for the government of the army. These annual Acts afford opportunities of amending the Army Act, of which considerable use has been made.

(a) 53 Geo. III. c. 17, s. 146.

(b) Blackstone, 14th ed., by Christian, i., p. 415,

CHAPTER III.

CRIMES AND SCALE OF PUNISHMENTS.

1. Part I of the Army Act classifies under various heads the military offences formerly contained in the Mutiny Act and Articles of War. It includes all the offences for which officers or soldiers in their military capacity are punishable by a court-martial, with the exception of those relating to taking money for commissions (a).

Classification of military offences.

2. The principle adopted in classifying the strictly military offences is that of grouping together offences of a similar character, and ranging the various groups as between themselves in a manner intended to impress the soldier with their relative military importance. For example, the Act begins with *Offences in respect of Military Service* (ss. 4-6), and these are followed by the heading *Mutiny and Insubordination* (ss. 7-11), by way of showing that gross misbehaviour in the field, mutiny and insubordination, rank first among military crimes. The above headings are followed by—

Principle of classification.

Desertion, Fraudulent enlistment, and Absence without leave (ss. 12-15);

Disgraceful conduct (ss. 16-18);

Drunkenness (s. 19);

Offences in relation to Prisoners (ss. 20-22);

Offences in relation to Property (ss. 23, 24);

Offences in relation to False Documents and Statements (ss. 25-27);

Offences in relation to Courts-martial (ss. 28, 29);

Offences in relation to Billeting (s. 30);

Offences in relation to Impressment of Carriages and their Attendants (s. 31);

Offences in relation to Enlistment (ss. 32-34);

Miscellaneous Military Offences (ss. 35-40);

Lastly come *Offences punishable by ordinary Law* (s. 41) of which the most serious are only triable by courts-martial under certain circumstances and subject to certain restrictions (b).

(a) Army Act, s. 155.

(b) See Chapter VII.

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—
Offences
dealt with
in this
chapter.

3. For the most part the military offences are laid down by the Act in the same, or nearly the same, language as that of the former Mutiny Acts and Articles of War. Those which from their importance or comparative frequency require a more detailed notice than others, are dealt with in this chapter: the rest are explained, so far as necessary, in notes to the Act.

Definition
of mutiny.

4. *Mutiny and Insubordination.*—The term “mutiny” implies collective insubordination, or a combination of two or more persons to resist or to induce others to resist lawful military authority. A man cannot be charged generally with mutiny, or with an act of mutiny, but only with some one or more of the specific crimes laid down in s. 7. If he has not brought himself within the terms of that section, his offence, however much it may tend towards mutiny, must be dealt with as insubordination, under s. 8 or s. 9, which afford ample powers for the purpose. Thus, where there is an actual mutiny or a conspiracy to mutiny, all concerned in the mutiny or conspiracy can be tried under s. 7 for causing or conspiring to cause, or joining in the mutiny, as the case may be. If no mutiny or conspiracy exists, a man can only be tried under s. 7 on a charge of endeavouring to persuade some person in Her Majesty's forces or in the navy to join in an intended mutiny, or of failing to inform his commanding officer of an intended mutiny.

Framing
charge of
mutiny.

5. In framing a charge therefore under s. 7, the specific act or acts which constitute the crime must always be alleged; and the crime is so grave that a charge for it should only be brought on very clear evidence. Cases of insubordination, even on the part of two or more, should, unless there appears to be a combined design on their part to resist authority, be charged under s. 8 or s. 9. If an insubordinate act were committed which could not be charged under any of the sections of the Act relating to mutiny and insubordination, it must be charged under s. 40 as an act to the prejudice of good order and military discipline. Provocation by a superior, or the existence of grievances, is no justification for mutiny or insubordination, though such circumstances would be allowed due weight in considering the question of punishment.

Definition
of sedition.

6 Sedition in s. 7 of the Act is the same crime as in the ordinary criminal law, and consists in the bringing into hatred or contempt, or exciting disaffection against, the Sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of justice; or in the exciting Her Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of the law, or in raising discontent

and disaffection among Her Majesty's subjects, or in promoting feelings of ill-will and hostility between different classes of such subjects. A person is not guilty of sedition who acts in good faith, merely intending to point out errors or defects in the government or constitution or the administration of justice, or to promote alteration of the law by legal means, or to point out, with a view to their removal, matters which have a tendency to produce feelings of hatred between different classes of Her Majesty's subjects. It is not, however, intended to imply that an officer or soldier is at liberty to enter on any such course of action or discussion, but simply to point out the legal meaning of the term sedition.

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7. Closely connected with the offence of mutiny is the offence of disobedience to a lawful command, which is punishable under s. 9 of the Act (*a*). No offences differ more in degree than offences of this class. The disobedience may be of a trivial character, or may be an offence of the most serious description, amounting, if two or more persons join in it, to mutiny. Accordingly the object of this section is to enable charges to be framed in such manner as to discriminate between different degrees of the offence.

Offences of disobedience to a lawful command.

8. The essential ingredients of the first and graver offence under the section are that the disobedience should *show a wilful defiance of authority*, and should be disobedience of a lawful command *given personally and given in the execution of his office by a superior officer*; in fact, it would ordinarily be such an offence as would be mutiny if two or more persons joined in it. In order to convict a man it must be shown; (1.) that a lawful command was given by a superior officer; (2.) that it was given personally by such officer; (3.) that it was given by such officer in the execution of his office (*b*); (4.) that the man disobeyed it, not from any misunderstanding or slowness, but so as to show a wilful defiance of his superior officer's authority. For example, a man at shot drill, not lifting the shot when ordered to do so by his non-commissioned officer, may have failed to hear the order or may be merely slow in executing it; on the other hand, the refusal may be deliberate and obstinate, so as to show in the clearest manner an intention to defy and resist superior authority.

Definition of graver offence of disobedience.

9. The second and less grave offence laid down by the section consists of disobedience to any lawful command given by a superior officer, which is not accompanied by the essential ingredients of the graver offence. To

Of less offence of disobedience.

(a) For the history of this enactment, see Clode, *Mil. Forces*, i. p. 155.

(b) As to meaning of "in the execution of his office," see note to section 8.

Ch. III. — constitute this offence it is essential that the disobedience should be wilful and deliberate, as distinguished from disobedience arising from forgetfulness or misapprehension, which can only be punished under s. 40. The disobedience must have reference to the time at which the command is to be obeyed. If the command be a lawful command, and demands a prompt and immediate compliance, hesitation or unnecessary delay in obeying it may constitute disobedience fully as much as a positive refusal to obey, though mere omission or hesitation can seldom constitute the graver offence referred to in the preceding paragraph; but if the command is of a prospective nature, a man, before he can be guilty of disobedience, must have had an opportunity to obey the command. For example, if the command is to turn out for parade in half an hour, then, until the expiration of that time, no offence of disobedience to a lawful command can be committed. If the soldier on receiving the command makes a reply implying an intention to refuse, and is put in the guard-room before the end of the half hour, he may be charged under s. 8 with using insubordinate language; or under s. 40 with using improper language, but not with the offence of disobedience to a lawful command.

What is a lawful command.

10. "Lawful command" means not only a command which is not contrary to the ordinary civil law, but one which is justified by military law; in other words, a lawful military command, whether to do or not to do, or to desist from doing, a particular act. A superior officer has a right at any time to give a command, for the purpose of the maintenance of good order, or the suppression of a disturbance, or the execution of any military duty or regulation, or for any purpose connected with the amusements and welfare of a regiment or other generally accepted details of military life. But a superior officer has no right to take advantage of his military rank to give a command, which does not relate to military duty or usages, or which has for its sole object the attainment of some private end. Such a command, though it may not be unlawful, is not such a lawful command as will make disobedience to it criminal. In any case of doubt, the military knowledge and experience of officers will enable them to decide on the lawfulness or otherwise of the command.

Duty of obedience.

11. If the command were obviously illegal, the inferior would be justified in questioning, or even in refusing to execute it, as, for instance, if he were ordered to fire on a peaceable and unoffending bystander. But so long as the orders of the superior are not obviously and decidedly in

opposition to the law of the land, or to the well-known and established customs of the army, so long must they meet prompt, immediate, and unhesitating obedience (a). Ch. III.

12. Religious scruples, however *bond fide* they may be, afford no justification for neglect or refusal to obey orders. An officer cannot (for example) plead conscientious scruples as justifying a refusal to go into the trenches on a Sunday, or to pay marks of respect enjoined by superior authority to a religion different from his own. Religious scruples.

13. *Desertion, Fraudulent Enlistment, and absence without leave.*—A distinction is made by the Act between desertion and fraudulent enlistment. The latter, which is constituted a separate offence by s. 13, is dealt with hereafter. Desertion and absence without leave.

The criterion between desertion and absence without leave is *intention*. The offence of desertion—that is to say, of deserting or attempting to desert Her Majesty's service (b)—implies an intention on the part of the offender either not to return to Her Majesty's service at all, or to escape some particular important service as mentioned in para. 16; and a soldier must not be charged with desertion, unless it appears that some such intention existed. Further, even assuming that he is charged with desertion, the court that tries him should not find him guilty of desertion, unless fully satisfied on the evidence that he has been guilty of desertion as above defined. On the other hand, absence without leave may be described as such short absence, unaccompanied by disguise, concealment, or other suspicious circumstances, as occurs when a soldier does not return to his corps or duty at the proper time, but on returning is able to show that he did not intend to quit the service, or to evade the performance of some service so important as to render the offence desertion.

14. It is obvious that the evidence of intention to quit the service altogether may be so strong as to be irresistible, as, for instance, if a soldier is found in plain clothes on board a steamer starting for America, or is found crossing a river to the enemy; while, on the other hand, the evidence is frequently such as to leave it extremely doubtful what the real intention of the man was. Mere length of absence is, by itself, of little value as a test, for a soldier who has been entrapped into bad company through drink, or other causes, may be absent some time without any thought of becoming a deserter; but in the case above put, of a soldier found on board a steamer start- Evidence of intention not to return.

(a) See s. 9 of the Army Act, and note.

(b) See s. 12 of the Army Act, and note.

Ch. III. ing for America, there could be no doubt of the intention, though he might only have been absent a few hours. —
Distance by 15. Nor can desertion invariably be judged by distance, itself
 not a
 criterion. for a soldier may absent himself without leave and depart to a very considerable distance, and yet the evidence of an intention to return may be clear ; whereas he may scarcely quit the camp or barrack yard, and the evidence of intention not to return (by the assumption of a disguise, for example, and other circumstances) may be complete.

Evasion of 16. A man who absents himself in a deliberate or clandestine manner, with the view of shirking some important service, though he may intend to return when the evasion of the service is accomplished, is liable to be convicted of desertion just as if an intention *never* to return had been proved against him. Thus if a man, on the eve of the embarkation of his regiment for foreign service, or when called out to aid the civil power, conceals himself in barracks, the court will be quite justified in presuming an intention to escape the important service on which he was ordered, and in convicting him of desertion.

Desertion 17. A man may be a deserter though his absence was by man on
 furlough. in the first instance legal (*e.g.*, being authorised by leave on furlough), the criterion being the same in all cases, namely, the intention of not returning. It is clearly shown by the Queen's Regulations, and by the explanation on the furlough itself, that a soldier on furlough is still under orders, and that if, without leave, he quits the place to which he has permission to go, or if he disguises or conceals himself so that orders cannot reach him, or if he goes on board a ship about to sail for a distant port, he is liable to be tried and convicted of desertion, though on furlough at the time. A soldier for example, at Ipswich, who obtains a pass to Bristol, and during his leave when without permission to go to Liverpool is found there in civilian costume on board a ship about to sail for New York, may be tried for desertion. It would be for him to show that the absence without leave from Bristol, proved against him, was innocent, and had nothing to do with desertion.

Attempt to 18. If a soldier commits an act which is apparently desert. a prelude to, or an attempt at, desertion, although no actual absence can be proved, as if he is caught in the act of slipping past a sentry, or climbing over a barrack wall in plain clothes, he should be tried for an attempt to desert.

Soldier sur- 19. The fact that a soldier surrenders, is not proof rendering himself. by itself that he intended to return, even though he is

in uniform at the time of surrender. The prosecutor may not be able to prove where the man has been during his absence, but evidence that the military patrols had searched carefully in the neighbourhood of the barracks without finding him, would show that he must have gone to a distance or concealed himself. From this and other circumstances the court may infer that he surrendered because he could not effect his contemplated escape.

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20. A prisoner charged with desertion may be found guilty of attempting to desert or of being absent without leave; and, on the other hand, a prisoner charged with an attempt to desert may be found guilty of actual desertion or of being absent without leave (a). In any case of doubt as to whether one or the other offence has been committed, the court should find the prisoner guilty of the less offence. A soldier guilty of desertion forfeits all his prior service, and is liable to serve for the term of his original enlistment, reckoned from the date of his conviction, or of the order dispensing with his trial (b).

General provisions as to desertion

21. As a general rule, a soldier quitting his regiment and enlisting in another should not be charged with desertion, but with fraudulent enlistment, for the very act of his enlisting in another regiment (unless in an exceptional case) shows that he did not intend to leave Her Majesty's service. On the other hand, if he does so for the purpose of avoiding a particular service—e.g., service abroad—or if during his absence he conducted himself so as to show that when he quitted he did not intend to return to the service, but changed his mind—he is, as above pointed out, guilty of desertion, and may be tried accordingly. But as already observed, it will suffice, except in very special cases, to prefer a charge for fraudulent enlistment alone.

Fraudulent enlistment.

22. *Stealing and Embezzlement.*—Ordinary thefts from civilians are left by the Act to be dealt with by the civil courts, or they may be tried by court-martial under s. 41 as civil offences; but the offence of stealing or embezzling the money or property of an officer or soldier or of any military institution has, in accordance with long-established practice, been made expressly punishable as a military offence (c).

Stealing and embezzlement, when tried by court-martial.

23. Stealing from a comrade is regarded as peculiarly disgraceful, seeing that in the daily routine of barrack life, soldiers must constantly leave their arms, accoutrements or kit exposed, as well as private property, such as

Stealing from a comrade.

(a) See s. 56 (3), (4).

(b) As to court of inquiry, in case of absence without leave exceeding twenty-one days, see s. 72; and as to procedure in case of confession of desertion or fraudulent enlistment, see s. 73.

(c) Theft from a comrade will as a rule be tried by court-martial. Q.R., Sect. VI., para. 75.

Ch. III. — money, watches, pipes, &c., trusting to the honour of their comrades. When missing articles are private property, and are found in the possession of another, there is a strong presumption that they were stolen, especially if the accused absented himself, and is discovered to have pawned or sold them. But it must be recollected that an intention to steal is essential, and that the mere taking of an article without that intent is not criminal. So, that if a soldier openly takes an article belonging to another, and returns it, or though he absented himself, did not secrete the article or make any attempt to sell or pawn it, then the presumption is against his being guilty of stealing. It will often be desirable to obtain evidence as to any custom of borrowing which may have prevailed in a particular room, or as between the accused and the owner of the article or other comrades, and as to any other circumstance tending to show whether the accused might reasonably have supposed that his taking the article would not be objected to. The restoration of an article does not, of course, by itself prove that the article was not stolen, but evidence of the above nature will often go far to show whether an article was in fact stolen or not. Again, the accused may show that he obtained the articles in a *bonâ fide* transaction, or that he found them, apparently without an owner, and without any name or mark on them by which the owner could be found. The fact of lost articles being found in the valise, or in the bed of a soldier, is not by itself proof that he stole the articles. They might have been put there unknown to him, perhaps intentionally by the real thief. A soldier should not in such a case be tried for stealing unless there are other circumstances from which it might be inferred that the articles were in his valise or bed with his knowledge. Evidence that a soldier was a suspected thief, or that he had on previous occasions stolen other articles from other comrades, is not admissible to show that he had anything to do with a particular theft. The improper possession by one soldier of a comrade's necessaries, where there is no evidence of theft, is a different question: it is not an offence against the comrade, but is an offence against military rules, and may, irrespectively of any fraudulent intent, be punished under s. 40.

Embezzlement.

24. The offence of embezzlement under the Act is committed where one entrusted with the care or distribution of public or regimental money or property, and being thus in lawful possession of it, appropriates it to the use of himself or of some person connected with him (a). A

(a) See s. 17 and note; and as to embezzlement generally, see Chapter VII., para. 182 *et seq.* As to order by confirming authority or Commander-in-Chief, for restitution of stolen or embezzled property see s. 75.

subordinate is frequently tempted to commit the offence, if he finds that his transactions are not regularly supervised, and that minor irregularities pass unnoticed. All officers, therefore, who have to do with the supervision of canteens or the accounts of pay sergeants or other non-commissioned officers, should be most careful to see that the forms and regulations of the service are strictly and invariably observed. Nothing can be more unjust and inexcusable than for an officer through indolence or carelessness in doing his own duty, to expose a soldier to temptation which may prove his ruin.

25. Drunkenness.—Drunkenness includes intoxication from the effects of opium or any similar drug as well as from liquor. Under the Army Act, an officer should be tried for the specific offence of drunkenness, whether on duty or not on duty, as the case may require, instead of being charged, as formerly, in the case of drunkenness not on duty, with conduct unbecoming the character of an officer and a gentlemen.

Drunkenness.
Of officer.

26. A non-commissioned officer, no less than a commissioned officer, may be tried by a court-martial for even a single act of drunkenness, whether committed on duty or not on duty. The commanding officer has, however, complete discretion whether to send the offence for trial or not, as the obligation of dealing summarily with a private soldier guilty of simple drunkenness under certain circumstances, does not extend to the case of a non-commissioned officer (a).

Of non-commissioned officer.

27. A private soldier also can be tried for any act of drunkenness, whether on duty or not on duty, by a court-martial under s. 19; but the practical effect of this section is materially modified by s. 46, which declares that the commanding officer shall deal summarily with the case of a soldier charged with drunkenness not on duty, unless he has been guilty of drunkenness on not less than four occasions in the preceding 12 months, or unless the offence is one of aggravated drunkenness within the meaning of s. 44 of the Act, i.e. of drunkenness on duty or after being warned for duty, or of being found by reason of drunkenness unfit for duty. Although, therefore, under s. 19 courts-martial have complete jurisdiction to try and punish simple drunkenness, and this jurisdiction is not limited by s. 46, yet a commanding officer will be guilty of a grave breach of duty and of an offence against the Act, if he disregards the directions in s. 46 with respect to dealing summarily with simple drunkenness of a private soldier (b).

Jurisdiction of courts-martial to try drunkenness of private soldier.

(a) Ss. 46, 183 (1).

(b) See Q.R., Sect. VI, paras. 58-3'. The directions in s. 46 do not affect the right of the soldier to claim a district court-martial, s. 46 (3).

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Drunken-
ness of
soldier on
duty.

28. In a military point of view, the offence of being "drunk on duty" is considered in reference to the soldier being fit or not fit for duty. There cannot be any distinction such as drunk, or very drunk, when on duty. Soldiers therefore are carefully inspected before being put on duty, so as to ascertain their fitness. If the superior, knowing a man to be drunk, out of good nature allowed him to proceed with the duty, or, if through carelessness, he passed a man as sober when he was not sober, then it would be desirable as a rule to try the man for being drunk, and not for being drunk on duty.

A soldier on the line of march is on duty from the beginning to the end of the march, and if drunk in his billet or halting place, may, if necessary, be tried for being drunk on duty.

Drunken-
ness of
soldier after
being
warned for
duty.

29. Although a soldier found to be drunk when required for any duty for which he has been duly warned, can only be charged with drunkenness, and not with drunkenness on duty, yet as the Act declares the offence to be aggravated drunkenness, punishment may be awarded as if it were drunkenness on duty. On the other hand, in ordinary routine circumstances, a soldier unexpectedly called on to perform some duty, for which he had not been warned—as (for example) if summoned from a canteen or from some public sports—and found to be unfit for duty, should in practice be dealt with as for simple drunkenness, although legally the offence may be one of aggravated drunkenness.

Drunken-
ness of
soldier not
on duty.

30. In the offence of simple drunkenness there are practically various grades, for the purpose of the amount of punishment; and evidence should be given as to the circumstances of the drunkenness, and as to whether the drunken man was riotous or not, so that punishment may be apportioned accordingly. Nothing can justify a soldier striking or offering violence to a superior, and great care is therefore enjoined to be taken to avoid bringing drunken soldiers in contact with their superiors. Mere abusive and violent language used by a drunken man, as the mere result of being taken into custody, should not be used as a ground for framing a charge of using threatening or insubordinate language to a superior officer. If a court-martial be required at all, discipline will generally be upheld by merely bringing the man to trial either for drunkenness (if he is liable to be tried) or for an offence under s. 40, treating the language merely in the nature of riotous conduct, and to that extent aggravating the offence.

Drunken-
ness con-
sidered in
relation to

31. Drunkenness often has to be considered by courts-martial not as an offence itself, but in relation to greater crimes, which it accompanies. It is a principle of English

law that drunkenness is no excuse for crime. But where intention is of the essence of the crime, drunkenness may justify a court-martial in awarding a less punishment than the crime would otherwise have deserved, or reduce the crime to one of a less serious character. Thus if an ordinarily steady respectful man commits himself when drunk by the use of insubordinate language, it may be clear that he did not really intend to be insubordinate; and though the offence cannot be passed over, yet a more lenient punishment will meet the justice of the case, than if the same man had used the same language deliberately when sober. So, too, acts, which if done deliberately would show a wilful defiance of authority, may, if the man were drunk, be regarded as amounting only to the less offence of simple disobedience. So, too, if it should appear that a man absenting himself under circumstances which might ordinarily show an intention of not returning, was drunk, the court would be justified in treating the absence as a mere drunken frolic, and finding the man, though charged with desertion, guilty of absence without leave. So again, a man so drunk as to be incapable of attending parade, should be charged with drunkenness rather than with an offence under s. 15 (2) of the Act.

Ch. III.
—
other crimes.

32. The remaining sections of this part of the Act relating to military offences do not call for special notice in this Chapter, with the exception of the proviso to s. 40 ("Conduct to prejudice of military discipline"), which provides that no charge shall be made under that section, for an offence which is a specific offence under any other provision of the Act, and is not a civil offence; although the conviction of a person so charged is not necessarily invalidated. Before then an offender is charged under this section, the convening officer must satisfy himself not only that the act, conduct, disorder, or neglect is to the prejudice of good order and military discipline, but also that it is not any one of the offences specifically punishable under the Act. Attempts to commit offences specified in the Army Act are not, with one or two exceptions, specifically made offences, and therefore can be tried under this section. But civil offences, *e.g.*, frauds, should not be tried under this section.

Conduct to prejudice of military discipline.

33. An important distinction is made by the Act, in that certain offences are punishable more severely when committed on active service (*a*) than at other times. Instances of this distinction will be found in sections 6, 8, 9, and elsewhere. A sentinel, for example, found asleep or drunk on his post, while on active service, would be liable

Offences committed "on active service."

(a) For the definition of "active service," see s. 189.

Ch. III. to suffer death if the character and circumstances of the offence were sufficiently grave, while if he were not on active service he could at the utmost be sentenced to imprisonment (a). Supposing the evidence on the trial to prove that an offence charged as having been committed on active service was committed not on active service, the offender may be found guilty of the latter offence only, and be sentenced accordingly to the less punishment (b).

Offences
punishable
by ordinary
law.

34. Jurisdiction is given by s. 41 to courts-martial to try ordinary civil crimes, from murder and treason downwards, when committed by persons subject to military law. The limitations on the exercise of this jurisdiction, and the other provisions of the section are explained in Chapter VII; which also contains for the information of officers who may have to try such crimes, a short statement of the laws relating to them.

Scale of
punish-
ments.

35. Having laid down the offences, the Act enacts (s. 44) a scale of punishment for officers and soldiers respectively. With two exceptions, each particular offence laid down in the Act has a *maximum* punishment assigned to it; and then, by s. 44, provision is made enabling a court-martial to award a less punishment. If, for example, the maximum punishment assigned to an offence is penal servitude, either imprisonment or any one of the punishments lower in the scale for officers and soldiers respectively, can be awarded in its place. The punishments named in the Act for each particular offence are *maximum* punishments, and a maximum punishment is only intended to be imposed when the offence committed is the worst of its class, and is committed by an habitual offender, or is committed under circumstances which require an example to be made. The two exceptions from the above rule are the offence of behaving in a scandalous manner unbecoming the character of an officer and a gentleman, in which case the only punishment is cashiering; and the civil offence of murder, in which case death is the only punishment.

Summary,
punish-
ments.

36. The Army Act, as a substitute for the formerly existing power of inflicting corporal punishment, enacted (s. 44) that a court-martial may award for an aggravated offence of drunkenness, or of disgraceful conduct, or for any offence punishable with death or penal servitude, committed by a soldier on active service, such summary punishment other than flogging, as may be directed by rules made by a Secretary of State. The rules made in pursuance of the above enactment, which will be found

(a) Army Act, s. 6 (1) (k).

(b) Army Act, s. 56 (5).

at p. 764, must be referred to for further details on this subject. **Ch. III.**

37. In conclusion must be noticed the power of Her Majesty, under s. 69, to make Articles of War for the better government of officers and soldiers. Such Articles may be made applicable to officers and soldiers at home or abroad, and must be judicially noticed by all judges, and in all courts. The penalty of death or penal servitude cannot be imposed by an Article of War, except for a crime expressly made liable to such punishment by the Act itself; nor can an Article of War render any crime punishable under the Act liable to be punished in a manner which does not accord with the provisions of the Act. The enumeration of offences in the Act is so complete, that the necessity for the exercise of the power of making Articles of War for the purpose of creating offences would appear improbable.

CHAPTER IV.

ARREST: INVESTIGATION BY COMMANDING OFFICER: SUMMARY POWER OF COMMANDING OFFICER: PROVOST-MARSHAL.

(i.) *Arrest.*

Military custody of person charged with offence.

1. Whenever any person subject to military law is charged with an offence, he may be taken into military custody, which in the case of an officer means arrest, and in the case of a soldier means confinement. Non-commissioned officers are, as a rule, put in arrest, and not in confinement (a). Persons subject to military law as officers under s. 175 will be put in arrest; persons subject to military law as soldiers under s. 176 will usually be put in confinement.

Arrest of officer.

2. An officer is put in arrest either directly by the officer who orders it, or more generally through the medium of a staff officer, *i.e.*, by the adjutant or a field officer of the regiment when the arrest is ordered by the commanding officer, and by an officer of the general staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. The order may be verbal or written, the latter as being more formal being the preferable mode, except where the offence is committed in the presence of the commanding or superior officer. On being put in arrest, an officer is deprived of his sword, and becomes to all intents and purposes a prisoner.

Arrest may be close or open.

3. The arrest may be either close or open, according to the direction of the officer who ordered it. The Queen's Regulations, direct that an officer in close arrest shall not leave his quarters or tent; but an officer in open arrest may be permitted to take exercise at stated periods within certain limits, which are usually the precincts of the regimental barracks or camp; he must not, however, appear out of uniform, nor at mess, nor at any place of amusement or public resort, such, for instance, as a billiard room, nor must he wear sash, sword, or belts (b). An officer placed under arrest should always be informed in writing of the nature of the arrest; which will be governed by

(a) Army Act, s. 45 (1), (2). Q.R., Sect. VI, paras. 21-27.

(b) Q.R., Sect. VI, paras. 22, 23.

the circumstances of the case. Any change in the nature of the arrest should be notified in writing to the prisoner. An officer may, if the circumstances of the case require it, be placed in the charge of a guard, piquet, patrol, or sentry, or if on active service abroad, in the custody of a provost-marshal (*a*). An officer under arrest may be ordered or permitted to attend as witness before a court-martial, or before a civil court.

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4. As a rule, a commanding officer will not place an officer under arrest without investigation of the complaint or the circumstances tending to criminate him; though cases may occur in which it would be necessary to do so. It is the duty of the commanding officer to report each case of arrest without unnecessary delay to the general or other officer commanding the district or station (*b*).

Arrest usually preceded by investigation.

5. It is expressly laid down by s. 45 (3) of the Army Act, that a junior officer may order the arrest of a senior (even of a different corps or branch of the service), if engaged in any quarrel, fray, or disorder; and in the case of any glaring impropriety, such as drunkenness on parade, it may become the *duty* of a junior to take the same extreme measure.

Arrest of senior by junior officer in certain circumstances.

6. This was clearly shown by the order on a court-martial for the trial of Brevet Lieut.-Col. H. at Plymouth, in 1819. Lieut.-Col. H. appeared at a regimental parade in a state of intoxication, and was put under arrest by Captain E., one of his junior officers. He was tried "for being drunk on duty when under arms inspecting the guards and piquet of the Regiment of Foot," and sentenced to be cashiered; the court observing that the occurrence of a commanding officer being put under arrest while in the actual command of a regimental parade was unprecedented in their experience; and that the circumstances detailed in evidence were not of that imperious urgency as to have called for the immediate adoption of so very strong a measure. The Prince Regent, however, in confirming the finding and sentence, took occasion to signify that he could not allow the observations of the court to go forth to the army without explaining "that the court are in error when they suppose that circumstances may not occur even upon a parade to justify a junior officer in taking upon himself the strong responsibility of placing his commander in arrest; such a measure must rest alone upon the responsibility of the officer who adopts it, and there are cases wherein the discipline and welfare of the service require that it should be assumed. In the pre-

Case of Lt.-Col. H. in 1819.

(a) Q.R., Sect. VI, para. 21.

(b) Q.R., Sect. VI, para. 25. See for summary of the provisions of the Act and rules for preventing unnecessary detention in arrest, s. 45 of the Act, and note.

(M.L.)

Ch. IV. "sent instance the sentence of the court appears to afford
— "a full justification of Captain E's conduct in the placing
"of Lieut.-Col. H. in arrest, though it would have been
"more regular if that officer had continued to rest upon
"his own responsibility, without calling a meeting of his
"brother officers to support it by their opinions."

Officer
under
arrest has
no right to
demand
court-
martial.

7. The Queen's Regulations point out that an officer put under arrest has no right to demand a court-martial, nor after he has been released by proper authority, to persist in considering himself under arrest, or to refuse to return to his duty. If he conceives himself wronged by arrest, his remedy is to complain to the Commander-in-Chief (a).

Release of
officer.

8. The release of an officer under arrest may be ordered by the officer who imposed the arrest, or the superior to whom it may have been reported; but, as a rule, the release is not to be ordered without the sanction of the highest authority to whom the case may have been referred (b).

No privilege
of Parlia-
ment from
arrest.

9. Peers and Members of the House of Commons are not privileged from arrest; but the fact and cause of the arrest should always be communicated to the Lord Chancellor, or to the Speaker, as the case may be.

Non-com-
missioned
officers.

10. The rules which govern the close and open arrest of officers apply also to non-commissioned officers. A non-commissioned officer charged with a serious offence will, as a rule, be placed under arrest forthwith; but in case of doubt as to the commission of the offence, the arrest may be delayed; and if the offence is not serious, it may be disposed of without previous arrest (c).

Confine-
ment of
private
soldiers.

11. Private soldiers taken into military custody (not under sentence) are confined in charge of a guard, piquet, patrol, or sentry, or of a provost-marshal; except for minor offences, such as absence from tattoo and other roll-calls, overstaying a pass, and other slight irregularities in quarters, which are to be disposed of by the commanding officer, without previously lodging the offender in the guard-room. In permanent barracks soldiers confined in charge of a guard will usually be detained either in the prisoners' room, or in the guard room cells (d). They are never to be kept in irons, except when it is necessary for safe custody, or to prevent violence. A soldier against whom a charge for a minor offence is pending, is not regarded as a prisoner, and attends all parades, though he

(a) Q.R., Sect. VI, para. 26; Army Act, s. 42.

(b) Q.R., Sect. VI, para. 24.

(c) See para. 3 above. Q.R., Sect. VI, para. 27. As to barrack serjeants, see para. 28.

(d) Q.R., Sect. VI, para. 29. As to soldiers in a state of drunkenness, see para. 31.

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will not be detailed for duty. Where troops are in billets or on the line of march, or accommodation for the detention of soldiers is otherwise not available, a soldier in military custody (not under sentence), may be committed by order of his commanding officer, for a period not exceeding seven days to any civil prison or lock-up (a). An offender, while in arrest or confinement, is not required to perform any military duty, further than may be necessary to relieve him from the care of any cash, stores, &c., for which he is responsible ; nor is he permitted to bear arms, except by order of his commanding officer in case of emergency or on the line of march ; and if by error he is ordered to perform any duty, his offence is not thereby condoned (b). On board ship he should, if not in close confinement, take his regular turn of watch, although he should not be placed on guard.

A man may be confined while awaiting trial by court-martial, or the promulgation of the finding and sentence of the court-martial which tried him, and may be so confined in a provost prison (c). A man when confined can only be released by competent authority, *e.g.*, if confined in a regimental guard room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard room by the authority of the officer commanding the garrison.

12. The offence of breaking or attempting to break arrest or confinement renders an officer liable to be cashiered, and a soldier liable to imprisonment (d). An offender confined to quarters, and quitting them for any purpose whatever, however short the time of his absence, is strictly speaking guilty of breaking his arrest. The gravity of the offence will depend mainly on whether the circumstances do or do not disclose deliberation, and intentional defiance of authority.

Breaking arrest.

13. The offences of releasing without proper authority a prisoner, and of suffering a prisoner to escape, are punishable in some cases more severely ; an offender who acts *wilfully* being liable to penal servitude (e). It will be remembered that here, as elsewhere, the punishments specified are maximum punishments.

Improper release, and suffering escape.

14. An officer or non-commissioned officer commanding a guard, or a provost-marshal, cannot refuse to receive or keep any person committed to his custody by an officer or

Receiving prisoners into custody.

(a) Q.R., Sect. VI, para. 29. For form of order, see Form L in App. III to Rules of Procedure. As to the duties of N.C. officers in relation to the confinement of private soldiers, see para. 30.

(b) Q.R., Sect. VI, para. 35.

(c) Q.R., Sect. VI, para. 219.

(d) Army Act, s. 22. As to escape, see note to that section.

(e) Army Act, s. 20.

Ch. IV. non-commissioned officer ; but the committing officer or non-commissioned officer must, at the time of committal, or within 24 hours after, deliver a written account, signed by himself, of the offence with which the person committed is charged (a).

Account of
offence.

15. This "account" should be a concise summary of the evidence on which the accused was made a prisoner, and should contain, without any unnecessary detail, all the material points of the offence. If the account states that the prisoner was drunk, or absented himself, and a witness subsequently adds before an investigating officer that the prisoner struck a non-commissioned officer, or used threatening language, the presumption is that the prisoner's conduct had not at the time been thought sufficiently serious to amount to an offence, and to be entered in the account. As a rule, then, the investigating officer would treat the fresh evidence merely as showing the nature and degree of the offence originally deposed to ; but in some cases he may consider it advisable to make this new evidence the substance of a specific charge.

Omission to
deliver
account.

16. The omission of the committing officer to deliver the "crime" (as the "account" is generally termed) will not justify the commander of the guard or provost-marshal in rejecting, much less in releasing, a prisoner. His proper course, in the event of such omission, is to take steps for procuring the "crime," or to report to the officer to whom his guard report is furnished that no "crime" has been delivered. If the "crime" or evidence sufficient to justify the detention of the prisoner is not forthcoming within 48 hours after committal, the latter officer will order the release of the prisoner (b).

Duty of
commander
of guard to
report name
and offence
of prisoner.

17. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing to the officer to whom he is ordered to report, the prisoner's name and offence, and the name and rank of the committing officer ; and he should include in his report the "account" above mentioned, or if it has not been delivered, should state the fact. If he fails to make this report within 24 hours after the prisoner was committed, or where he is relieved from his guard within that period, then immediately on being so relieved, he himself commits an offence. The report will, as a rule, be made to his commanding officer (c).

(a) Army Act, s. 45 (4).

(b) Q.R., Sect. VI, para. 19.

(c) Army Act, s. 21. See for summary of the provisions of the Act, and rules for preventing unnecessary detention in confinement, s. 45 of the Act and note.

(ii.) *Investigation by Commanding Officer.*

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18. The object of the above report is to enable the prisoner's commanding officer, without delay, to institute an investigation of the case. There is some difference in the procedure in the case of an officer and in that of a soldier. Investigation by commanding officer.

19. The case of an officer may be referred to a court of inquiry, and need not, unless the officer requires it, be formally investigated before his commanding officer (*a*); but the commanding officer, in the case of an officer as well as of a soldier, is made by s. 46 of the Army Act responsible for dismissing the charge, if it ought not to be proceeded with; and, if it ought to be proceeded with, for taking the proper steps to bring the offender before a court-martial. In case of officer.

20. The case of a soldier must be investigated by the commanding officer himself, or by an officer to whom he has delegated the conduct of the investigation. He can dismiss the charge, or remand the case for trial by court-martial, or can apply to superior military authority, or, in the case of a private soldier, can award punishment summarily, subject to the right of the soldier, if his commanding officer proposes to deal with the case otherwise than by awarding a minor punishment, to elect to be tried by a district court-martial (*b*). A warrant officer, or person subject to military law as a soldier, but not belonging to Her Majesty's forces, cannot be summarily punished, and a non-commissioned officer, though not legally exempt, is not allowed by the Queen's Regulations to be summarily punished (*c*). In case of soldier.

21. This duty of investigation by the commanding officer requires deliberation, and the exercise of temper and judgment, in the interest alike of discipline and of justice to the prisoner. The investigation usually takes place in the orderly-room, in the morning, and must be conducted in the presence of the prisoner (*d*); but, in the case of drunkenness, a prisoner should never be brought up till he is perfectly sober (*e*). Duty of officer conducting investigation.

22. After the nature of the offence charged has been made known to the prisoner, the witnesses present on the spot who depose to the facts for which he has been confined are examined. The prisoner has a right to demand Examination of witnesses.

(*a*) Rule 8.

(*b*) Army Act, s. 46, Rules 4, 7.

(*c*) Army Act, s. 182 (1); 184 (2). Q.R., Sect. VI, para. 49; and as to summary punishments, see below, para. 31, &c.

(*d*) Rule 3 (A).

(*e*) See Q.R., Sect. VI, para. 31, which suggests the lapse of 24 hours before he is brought up.

Ch. IV. that the witnesses against him be sworn ; and he will also have full liberty of cross-examination (*a*).

Decision of
commanding
officer.

23. The commanding officer, after hearing what is urged against the prisoner, will, if he is of opinion that no military offence at all, or no offence requiring notice has been made out, at once dismiss the charge (*b*). Otherwise, he must ask the prisoner what he has to say in his defence, and whether he has any witnesses to call, and will give him full opportunity both of making a statement and of supporting it by evidence (*c*). The commanding officer will then consider whether to deal summarily with the case himself, or to send it for trial by a court-martial. First and less serious offences of the class which he has authority under the Queen's Regulations to dispose of summarily, without reference to superior authority, should, as a rule, be so dealt with, subject to the soldier's right to elect before the award to be tried by a district court-martial. If the offence does not belong to the above class, and the commanding officer desires to dispose of it summarily, he must refer to superior authority by letter, stating briefly the circumstances, and accompanied by the prisoner's company defaulter sheet. A charge for any offence, of whatever class, may, if the commanding officer thinks fit, be referred in the first instance to superior authority, with an application for a district court-martial (*d*). If a court-martial is ordered or applied for, the prisoner can be kept in arrest or confinement until the charge is disposed of.

Caution as
to expres-
sing
opinion.

24. During the investigation, the officer conducting it must be careful not to let fall, before he disposes of the case, any expression of opinion as to the prisoner's guilt, or one which might prejudice him at a subsequent trial (*e*). It frequently happens that officers who have been present at the investigation are detailed as members of the court convened in consequence of it ; therefore, nothing should be said or done which might, though unconsciously, bias their judgment before hand.

Right of
soldier to
claim court-
martial.

25. If the commanding officer proposes to deal with the case summarily, otherwise than by awarding a minor punishment, he must ask the soldier whether he desires to be dealt with summarily, or to be tried by a district court-martial ; and the soldier may, if he chooses, claim to be tried by a district court-martial. Save as aforesaid, a soldier has no right to claim a court-martial (*f*).

(*a*) Army Act, s. 46 (6) ; Rule 3 (A), (B).

(*b*) Rule 4 (A).

(*c*) Rule 3 (A).

(*d*) Rule 4 ; Q.R., Sect. VI, paras. 30-41.

(*e*) Q.R., Sect. VI, para. 36.

(*f*) Army Act, s. 46 (8) ; Rule 7.

26. Where a commanding officer decides on applying for a district or general court-martial, the evidence given by any witnesses before him must be taken down in writing in the presence of the prisoner; the prisoner should be allowed to cross-examine within reasonable limits, and if there is any variance between the evidence as taken down and that given on the prior investigation, the prisoner must be allowed to question the witness as to such variance. Any statement made by the prisoner, which is material to his defence, will also be added in writing (a), but the prisoner must be warned that this will be done.

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Summary of evidence to be taken in case of remand for district or general court-martial.

27. The evidence and statement, if any (called the summary of evidence), must be taken down in the presence of the commanding officer himself, or of some officer deputed by him (b). Great care is necessary in the performance of this duty; the exact words used by the witness or prisoner should as nearly as possible be taken down, and the summary should be free from any expression of opinion or conjectures, and from matter not bearing on the case. The difference not unfrequently observable between the statements recorded in the summary of evidence and the evidence given before a court-martial, may often be traced rather to the hasty or careless preparation of the summary, than to any prevarication or desire to mislead on the part of the witnesses.

Mode of taking summary.

28. If, in taking the evidence in writing, any fresh matter is brought out, or if for any other reason the commanding officer desires to reconsider his decision, he is at liberty to do so, and to give the prisoner the option of being dealt with summarily, instead of being tried by a court-martial (c). Of course, this power cannot be exercised by the commanding officer when the prisoner has himself elected to be tried by a district court-martial.

Commanding officer may reconsider his decision.

29. The summary of evidence, like the depositions before justices, may be used for certain limited purposes at the trial, and also for the purpose of giving to the prisoner notice of the charge he will have to meet, and to the convening officer and president of the court notice of the case to be tried. Either the summary itself or a true copy must be laid before the court-martial before whom the prisoner is tried; and a copy may be given to the prisoner gratis, and must be given to him on his request and payment of the proper fee (d).

Use of summary of evidence.

30. An application for a court-martial should usually be disposed of at once; but if the convening officer detects

Convening court.

(a) Rule 5 (A), (B).

(b) Rule 5 (C).

(c) Rule 5 (C).

(d) Rule 5 (D), (E). As to use of summary, see note to Rule 8.

Ch. IV. — matter showing culpable neglect or improper conduct on the part of the prisoner's superiors, he may delay assembling a court for the purpose of making inquiry. In most instances, the offences referred to him by the commanding officer in pursuance of the Queen's Regulations, may well be disposed of by an inferior court, unless circumstances render it necessary in the interests of discipline to deal with them more severely. The officer who convenes a court-martial is responsible for the correctness of the charges (a), and will, if necessary, revise them after considering the evidence as shown in the summary. The charge sheet containing the charges as approved by the officer convening the court-martial will be sent to the president, as well as the summary of evidence, or a true copy thereof, and will be laid by him before the court-martial (b). The prosecutor should have a copy of the charge sheet and summary, or at least should have access to them.

(iii.) *Summary power of Commanding Officer.*

Power to deal summarily with case of non-commissioned officer or soldier.

31. The power of the commanding officer to punish summarily a soldier is twofold ; first, the power under the Army Act to award imprisonment, deduction from ordinary pay, and in the case of drunkenness a fine not exceeding 10s. (c) ; and, secondly, the power under the Queen's Regulations to award the minor punishments of confinement to barracks, or extra guards or piquets, subject and according to the provisions of para. 47 of Section VI, to which reference must be made. The imprisonment must not exceed fourteen days, except in the case of absence without leave, in which case it may extend to the number of days of absence, not exceeding twenty-one (d). A non-commissioned officer is not to be subjected to summary or minor punishments by his commanding officer, but he may be reprimanded or ordered to revert from an acting or lance rank to his permanent grade (e), or may be removed from an appointment to his permanent grade, but this power of removal, if the non-commissioned officer is above the rank of corporal, and in one or two other cases, is not to be exercised without reference to superior authority (f).

Drunkenness.

32. Drunkenness and absence without leave are the two offences which require to be most frequently dealt with by the commanding officer ; indeed, the case of drunkenness

(a) Rule 17 (A).

(b) Rule 17 (E).

(c) Army Act, ss. 46, 138 ; Q.R., Sect. VI, para. 47.

(d) Army Act, s. 46 (2) (a), (4), (5) ; Rule 6, and see note.

(e) Q.R., Sect. VI, para. 49.

(f) Q.R., Sect. VII.

of a soldier not on duty (not being an aggravated offence of drunkenness within the meaning of s. 44 of the Army Act) *must* be so dealt with, unless the soldier has been guilty of drunkenness not less than four times in the preceding twelve months, or unless he has elected to be tried by a district court-martial (a). This obligation does not apply to a non-commissioned officer charged with drunkenness (b).

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33. In the case of absence without leave, the commanding officer may, as already observed, award imprisonment not exceeding twenty-one days; but in determining his award he is to have regard to the number of days of absence, and though he may give 168 hours' imprisonment for absence during *less* than seven days, yet it must always be remembered that for absence *exceeding* seven days the term awarded cannot exceed the number of days of absence. For example, suppose private *A. B.* has been absent without leave, and the commanding officer thinks it expedient to award imprisonment, then the imprisonment may be, if the man has been absent three days, for any number of hours up to 168; if he has been absent eight days, for any number of hours up to 168, or for eight days; if he has been absent eighteen days, for any number of hours up to 168, or any number of days from seven to eighteen (c).

Absence without leave.

34. By s. 46, coupled with s. 138, and the Royal (Pay) Warrant, the commanding officer is authorised to direct a forfeiture of the soldier's ordinary pay for every day of absence without leave not exceeding five days; while pay is forfeited, as a matter of course, for every day of absence either on desertion, or without leave, exceeding five days, or as a prisoner of war; also for every day of imprisonment under sentence, or of detention under any charge resulting in conviction by a court-martial or civil court, or under a charge of absence without leave, resulting in an award of imprisonment by his commanding officer; also for every day in hospital on account of sickness, certified to have been caused by an offence committed by him. In cases where the pay is forfeited as a matter of course, there should be no award, and the forfeiture can only be remitted by the Queen or the Secretary of State (d). The commanding officer may also, where a soldier is not tried by court-martial, order stoppage of his pay to make compensation

Award of forfeiture in case of absence.

(a) Army Act, s. 46 (3); Q.R., Sect. VI, paras. 58-66.

(b) Army Act, s. 183 (1).

(c) In dealing summarily with cases of absence, the commanding officer must take into consideration all the circumstances. Q.R., Sect. VI, para. 52. As to notifying in Regimental Orders the names of men absent without leave, see para. 53.

(d) Army Act, ss. 138, 139.

Ch. IV. — for any expense or damage occasioned by any offence committed by him, or caused by his losing or destroying any arms, equipment, military necessaries and so forth, or by his injuring any buildings or property (a) ; and may likewise order the stoppage of the amount of any fine awarded by a court-martial or a civil court, or the commanding officer himself ; also the stoppage of any sum which the soldier may be required to pay for the maintenance of his wife or child, or of any bastard child, or towards any relief granted by way of loan to his wife or child (b).

Right of soldier to demand district court-martial.

35. There is no appeal from the award of the commanding officer, but, as has been already mentioned, the soldier may, in certain cases, instead of submitting to the jurisdiction of his commanding officer, claim to be tried by a district court-martial (c).

No trial after punishment by commanding officer.

36. When once an offender has been punished by his commanding officer he cannot be tried by a court-martial for the same offence ; and similarly he cannot be punished by his commanding officer or subjected by him to any stoppage for any offence of which he has been acquitted or convicted by a court-martial or by a competent civil court (d). When a commanding officer has once awarded punishment for an offence, he cannot afterwards increase it (e). It is considered that a commanding officer's award is complete when the man has left his presence.

Delegation of power by commanding officer.

37. A commanding officer will delegate to officers commanding troops, companies, or batteries, the power of awarding for minor offences minor punishments not exceeding seven days' confinement to barracks (f).

Commanding officer of detachment.

38. The commanding officer of a detachment has, unless restricted by superior authority, the same power of awarding summary punishment as the commanding officer of a corps (g).

Provost-Marshal.

Provost-marshal.

39. Arrests will often be made abroad by the provost-marshal or his assistants, who may be appointed by a general officer commanding a body of forces abroad, whether on active service or not. A provost-marshal cannot, as was formerly the case, inflict any punishment

(a) Army Act, s. 138 (3), (4).

(b) Army Act, s. 138 (7), (8).

(c) Army Act, s. 46 (8).

(d) Army Act, s. 46 (7).

(e) Rule 6 (B). As to the power of the general officer commanding the district to cancel an award, or reduce the punishment, see Q.R., Sect. VI, para. 57.

(f) Q.R., Sect. VI, para. 51.

(g) Q.R., Sect. VI, para. 16, and see para. 17.

of his own authority (a). He can only arrest and detain for trial persons subject to military law committing offences, and carry into execution punishments to be inflicted in pursuance of a court-martial (b). Ch. IV.

(v.) Discipline on Board H.M.'s Ships.

40. The discipline of troops embarked as passengers on board any of Her Majesty's ships is regulated by an Order in Council of 6 February, 1882, printed below, p. 775. Discipline
on board
H.M.'s
ships.

(a) The provost-marshal was, until 1829, appointed by the general, and exercised his powers without any statutory authority, and the appointment could only be justified legally as being made under the Queen's prerogative to govern the army in time of war in places out of her dominions. Considerable doubt must have existed as to the existence of the power, and consequently as to the legality of the provost-marshal's acts, and a correspondence took place between the Duke of Wellington and the Government on the subject during the Peninsular War. (See Clode, *Mil. Forces*, ii. p. 662.) In 1829 the Article of War respecting the provost-marshal was inserted, and gave legal recognition and—if it was within the powers of the Articles—legal sanction to the appointment and powers of the provost-marshal. (See Clode, *Military and Martial Law*, pp. 181-3.) The above powers were curtailed in 1879 by the Act of that year.

(b) Army Act, s. 74.

CHAPTER V.

COURTS-MARTIAL.

(i.) *Constitution and Jurisdiction.*

Three descriptions of court-martial.

1. The descriptions of court-martial before which a prisoner whose case is too serious to be disposed of summarily by the commanding officer, can ordinarily be brought, are three (*a*)—

- (1.) The regimental court-martial ;
- (2.) The district court-martial ; and
- (3.) The general court-martial.

None of these tribunals has power to try any person unless he is subject to military law as provided by the Army Act (*b*). But each of them has under the Army Act complete jurisdiction to try any military offence whatever committed by a person so subject to military law ; the difference between their powers consisting, in the extent of punishment which each tribunal can award, and in the incapacity of the inferior tribunals to try officers and persons in the position of officers.

Powers of regimental court.

2. Thus, a regimental court-martial cannot award a heavier punishment than forty-two days' imprisonment, and cannot discharge a soldier with ignominy ; nor can it try an officer or a warrant officer, or a person subject to military law, but not belonging to Her Majesty's forces (*c*).

Of district court.

3. A district court-martial cannot award any punishment higher than two years' imprisonment ; and cannot sentence a warrant officer to any punishment except dismissal, or such suspension or reduction as is mentioned in s. 182 of the Army Act, and cannot try an officer (*d*).

Of general court.

4. A general court-martial alone can award the punishments of penal servitude and death, and can try an officer.

Jurisdiction in respect of certain offenders.

5. A person who since the commission of an offence by him has ceased to be subject to military law, may nevertheless be tried and punished by a court-martial for his

(*a*) As to field general court-martial, see below, paras. 24-26.

(*b*) Army Act, ss. 175, 176 ; see also Chapter XIV, para. 47.

(*c*) Army Act, s. 47 (5) ; s. 182 (1) ; s. 184. A non-commissioned officer above the rank of corporal is not ordinarily to be tried by a regimental court. Q.R., Sect. VI, para. 5.

(*d*) Army Act, s. 48 (6).

offence ; but except in the case of mutiny, desertion, or fraudulent enlistment, he can only be tried within three months after he ceased to be subject to military law (*a*) ; but militia and reserve men can in the case of certain offences be tried within two months after their apprehension (*b*). A court-martial has no jurisdiction to try a person for any offence of which he has been already acquitted or convicted by a court-martial or by a competent civil court (*c*) ; but this does not apply where there has been no regular trial resulting in an acquittal or conviction (*d*), and in the case of a court-martial the conviction must have been duly confirmed. But although as a general principle non-confirmation of a conviction by a court-martial enables a man to be tried again, it is obvious that this course should only be exceptionally adopted, as, *e.g.*, if the plea of a prisoner to a charge of desertion is, that he was guilty, but intended to return, and this plea has been recorded as guilty, although amounting to a plea of not guilty. The cases where such a course is more particularly applicable are mentioned in the Act (see ss. 53, 54 (6), 157), and the Rules (see 56 (B), 57, 66 (B), 99).

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6. An offence, other than mutiny, desertion, or fraudulent enlistment, cannot be tried by court-martial if three years have elapsed since the date of its commission (*e*), but a partial exception from this is made, as already stated, for militia and reserve men. An offence, wherever committed, may be tried and punished at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general court-martial, and the trial will take place as if the offender were under the command of such officer (*f*). Offences committed on board ship can be tried on board before reaching the port of disembarkation, as if committed on land at the place where the offender embarked, but a court-martial is never held on board one of Her Majesty's ships, except a regimental court-martial for trying a non-commissioned officer (*g*).

Further observations on jurisdiction.

(*a*) Army Act, s. 158 (1).

(*b*) Reserve Forces Act, 1882, s. 26 ; Militia Act, 1882, s. 43.

(*c*) Army Act, ss. 53, 157, 162 (6), and note.

(*d*) See Rule 86 (B).

(*e*) Army Act, s. 161. When a soldier has served in a corps for three years in an exemplary manner, he cannot be tried for fraudulent enlistment or for desertion (other than desertion on active service) committed before the commencement of such three years (s. 161). If a soldier has served for three years without an entry in the regimental defaulters' book, he is to be considered as having earned exemption under the above enactment ; Q.R., Sect. VI, para. 41.

(*f*) Army Act, ss. 159-160.

(*g*) Army Act, s. 188 ; Naval Discipline Act, s. 88. As to discipline of troops on board H.M.'s ships, see Order in Council below, p. 775.

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Composition of courts.

7. Closely connected with the difference between courts-martial as regards their power of punishment is the difference as regards their composition, in that the inferior courts-martial consist of fewer members, and may be composed of officers of lower rank.

Legal minimum.

8. Thus the legal minimum number of members on a regimental court-martial, and on a district court-martial, is three ; while on a general court-martial in the United Kingdom, India, Malta, and Gibraltar it is nine, and elsewhere five (*a*).

Composition of regimental court.

9. The members of a regimental court are not required to be, but will as a rule all be, officers of the prisoner's regiment, or attached to it, except where detachments of several corps are serving together—on the march, for example, or on board ship. Every member of a regimental court must have held a commission for a year (*b*).

Of district court.

10. A district court-martial must consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment of cavalry or battalion of infantry, if other officers are not available (*c*). Every member of a district court must have held a commission for two years (*d*).

Of general court.

11. A general court-martial must also consist, so far as seems practicable, of officers of different corps, and can only be composed exclusively of officers of the same regiment or battalion if other officers are not available (*c*). Every member of a general court-martial must have held a commission for three years, and if the court is to try a field officer, must not be under the rank of captain. The Army Act further provides that no less than five members must be of a rank not below that of captain ; and Rule 21 requires the members of a court-martial for the trial of an officer to be of equal, if not superior, rank to that officer, unless officers of such rank are not available. For the trial of a commanding officer of a corps, as many members as possible must hold, or have held, commands equivalent to that held by the prisoner (*e*).

Trial of members of auxiliary forces.

12. In the case of the trial of a prisoner belonging to the auxiliary forces, one member of the court is, if practicable, to belong to those forces, and to

(*a*) See Army Act, s. 48, Rule 18, and note ; and as to the number to be detailed in ordinary cases, and waiting members, Q.R., Sect. VI, para. 99. For doubtful or complicated cases, a district court should usually consist of five members, *ib*.

(*b*) Army Act, s. 47 (2) (see note), Rule 19 (C).

(*c*) Rule 20 (A).

(*d*) Army Act, s. 48 (4), Rule 10 (C).

(*e*) Rules 19 (C), 20 (A), and 21 ; Army Act, s. 48 (3 ; Q.R., Sect. VI, para. 101.

the same branch as that to which the prisoner belongs (a). Ch. V.

13. In all cases the members of a court must be themselves subject to military law, and must not be personally interested in any manner in the case to be tried by them. Nor can an officer sit on a court-martial if he is the convening officer, or the prosecutor, or a witness for the prosecution, or if he investigated the charges, or was member of a court of inquiry respecting the matters on which the charges are founded, or if he is the commanding officer of the prisoner, or of his corps or battalion (b). General provisions.

14. The president of a court-martial must always be appointed by the convening officer. The other officers may be either appointed or detailed by the convening officer, and if detailed may be appointed by the proper officer according to the custom of the service. The president of a court-martial should be not below the rank, in the case of a regimental court, of captain; and in the case of a district or general court, of a field officer; but may in exceptional circumstances be of a lower rank. In the case of a general court-martial, if a general officer or colonel is available, an officer of inferior rank is not to be appointed (c). Honorary rank does not entitle an officer to the presidency of a court-martial (d), but he is legally qualified if duly appointed. In practice a combatant officer is always appointed. President.

15. The object of the regimental court-martial is to try offences which, though not of a very serious nature, appear from the character of the offender or otherwise, to require severer punishment than the commanding officer can award; or which, for some peculiar reason, he may deem it inexpedient to deal with himself. As, however, commanding officers can now award 14 days' imprisonment, many offences will be dealt with summarily which formerly would have been sent before a regimental court. The powers of district courts-martial are sufficient to deal with all ordinary crimes committed by non-commissioned officers and soldiers; and the Queen's Regulations direct that the higher tribunal of a general court-martial is only to be resorted to in cases of very aggravated offences (e). Remarks on trial of offences by different courts.

16. The descriptions of courts-martial further differ as regards the officers who can convene them. Convening officer.

(a) Rule 20 (B).

(b) Army Act, s. 50 (3), Rule 19 (B). See also notes to that section and rule, as to investigating officer and personal interest. A member of a court cannot act as confirming officer for that court, Army Act, s. 54 (4).

(c) Army Act, s. 47 (4), and s. 48 (9); Q.R., Sect. VI, para. 101.

(d) Pay Warrant.

(e) Q.R., Sect. VI, para. 75.

- Ch. V.** **17.** A regimental court-martial can be convened by a commanding officer (as defined by Rule 128) if not below the rank of captain; also by an officer not below the rank of captain when in command of two or more corps, or portions of two or more corps, and on board a ship by a commanding officer of any rank. It may thus be convened, not merely by the commanding officer of a regiment or detachment, but by an officer *de facto* commanding detachments of several regiments, however temporary his command may be, if he has, by the custom of the service, authority to tell off the prisoners belonging to those detachments. A regimental court-martial can also be convened by an officer who is authorised to convene a general or district court-martial; but he should order the commanding officer (above described) to convene it, unless that officer is unable to form an adequate court from the officers under his command (*a*).
- Of district court.** **18.** A district court-martial can be convened by an officer authorised to convene a general court-martial, or by an officer who has received from such officer a warrant authorising him to convene district courts-martial (*b*).
- Of general court.** **19.** A general court-martial can be convened by direct warrant from Her Majesty, or by an officer authorised by Her Majesty to convene such courts, or by an officer holding a warrant to convene such courts from some officer authorised to delegate the power of convening them (*c*).
- Warrants for convening in U.K.** **20.** Warrants giving officers power to convene general courts-martial are usually issued by the Queen to the Commander-in-Chief, and to general officers commanding districts in the United Kingdom.
- In India and elsewhere out of U.K.** **21.** In India warrants giving power to convene and to confirm the findings and sentences of general courts-martial are usually issued to the Commander-in-Chief in India, and to the Lieut.-Generals commanding the forces in the Punjab, in Bengal, in Bombay, and in Madras; and elsewhere out of the United Kingdom to general officers commanding, either in the colonies or on active service.
- Contents of warrants.** **22.** Any such warrant, and also any warrant of delegation given by the officer so authorised, may contain any reservations or special provisions, and may be addressed to an officer by name, or by the designation of his office; and may give authority to a person performing the duties of an office named, or to the successors in command of an officer; and may be wholly or partly revoked by a fresh warrant (*d*).

(*a*) Army Act, s. 47 (1); Q.R., Sect. VI, para. 81.

(*b*) Army Act, ss. 48 (2), 123.

(*c*) Army Act, ss. 48 (1), 122.

(*d*) Army Act, ss. 122 (3), (4), 123 (3). For forms of warrants, see p. 766; and as to the ordinary practice in issuing warrants, see below, paras. 94, 95.

23. Every general officer authorised, whether immediately by warrant from the Queen or mediately by delegation, to convene a general court-martial has by virtue of the Act power to convene either a district or regimental court-martial, and also to empower another officer to convene district courts-martial, who, by virtue of this power, will be able to convene a regimental court-martial. Such general officer should, however, as above mentioned, only convene a regimental court himself, where circumstances render that course desirable (a).

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Powers under warrant for convening general courts-martial.

24. The foregoing remarks have left out of notice a court-martial of an exceptional kind, termed a Field general court-martial. This court has the same power as a general court-martial, including the power of trying an officer, and is convened in an exceptional way (no warrant being required), and is subject to exceptional rules, under which the procedure is of a more summary character than that of an ordinary court-martial (b).

Field general court-martial

25. A field general court-martial can only be convened on active service or abroad for the trial of offences which it is not practicable, with due regard to the public service, to try by an ordinary general court-martial. If troops are not on active service, the power of convening it is further limited to cases of offences against the person or property of some inhabitant of, or resident in, the country (c).

Object of field general court.

26. A field general court-martial must consist of not less than three officers, unless the convening officer is of opinion that three are not available, in which case it may consist of two; but in the latter case it cannot award any sentence exceeding imprisonment or summary punishment. A sentence of death requires the concurrence of all the members (d).

Constitution and powers.

(ii.) Procedure.

27. When a commanding officer remands an accused person for trial by court-martial he must immediately take steps for the assembly of the court, and, unless for some special reason, must do so within 36 hours. If he decides on a regimental court, he will issue his order for convening it; in any other case he will send to superior authority an application for a district or general court-

Application for court-martial by commanding officer.

(a) See above para. 17, and Q.R., Sect. VI, para. 81, which applies also if the offender belongs to a special corps or department.

(b) See s. 49, and notes, and as to the procedure of field general court-martial, Rules 104-122.

(c) As to convening officer, see s. 49 and Rule 104.

(d) S. 49 (1) (2).

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Duty of convening officer in considering application for court-martial.

28. An officer receiving an application to convene a district or general court-martial must consider the nature of the case, the statutory provisions, and the regulations applicable to it, and subject thereto, must use his discretion as to the mode of disposing of the application. He must satisfy himself that the charge is for an offence under the Army Act, and properly framed in accordance with the Rules and Queen's Regulations, and that the evidence justifies the trial of the prisoner (b). If he thinks it does not, he should order the prisoner to be released; if he doubts, he can order the release or refer the case to superior authority. If he thinks it should be disposed of summarily or by regimental court-martial, he should give directions to that effect. If he thinks it should be tried by a district or general court-martial, he will either convene such a court, or apply for such a court to be convened.

Power to refer to superior authority.

29. He is at liberty to refer to superior authority in any case of difficulty, and he will be bound to refer, if the case is one directed by order or regulation to be referred to an officer having power to convene a particular description of court. When a soldier is to be arraigned on a serious charge, charges for any minor offence may be dropped if the convening officer thinks proper (c).

Considerations to be borne in mind by convening officer.

30. In forming his decision the convening officer will give due weight to the prevalence of the particular crime charged, to the general state of discipline in the corps or district, the character of the individual, and to all the different circumstances which may render it expedient at one time to try an offence by a district court-martial, and at another time to take a more serious view of it (d). A case should not, as a rule, be sent for trial unless there is reasonable probability that the accused person will be convicted; at the same time there may be cases where disgraceful charges have been preferred, and where a court-martial affords the only means to the accused of

(a) Rule 4 (C); Q.R., Sect. VI, paras. 39-45.

(b) Rule 17 (A); Q.R., Sect. VI, para. 90.

(c) Q.R., Sect. VI, paras. 70-74, 90, 91.

(d) Q.R., Sect. VI, para. 75.

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decisively clearing his character. In any event, members of courts-martial should not allow the fact of a case being sent for trial, or the fact of a particular description of court-martial having been selected, in any degree to influence their estimate of the evidence.

31. It is directed by the Queen's Regulations that offenders are not to be sent home from foreign stations with charges pending against them, except in cases of necessity. But for the sake of convenience a prisoner may be removed for trial, from the place where he is serving, so long as he is not prejudiced in his defence by the change (a).

Removal of offender for trial.

32. The convening officer having settled the charges on which the prisoner is to be tried, should take steps for having them communicated to the prisoner. The officer communicating the charges to the prisoner should always inquire whether he understands them, and if not should fully explain them to him. A copy must always be given, except when, on active service, it is impracticable. The prisoner should, if he desires it, be informed of the officers by whom he is to be tried, as soon as they are named; and if he is to be tried together with other prisoners, he should always have notice given to him, so as to enable him to object on the ground that the evidence of the other prisoners is material for his defence. Reasonable steps are to be taken for procuring the attendance of any witnesses whom the prisoner desires to call (b). A prisoner is not entitled to any list of witnesses for the prosecution, neither is he bound to give the prosecutor a list of his own witnesses (c).

Notice to prisoner of charges, &c

33. The prisoner is to have proper opportunity to prepare his defence, and liberty to communicate with his witnesses and legal adviser, or other friend. This liberty is subject to the limitation that they are available, as the object of the rule is to give the prisoner full opportunity to prepare his defence, but not to enable him to postpone his trial (d).

Prisoner to have opportunity of preparing defence.

34. When a court-martial assembles at the time and place named in the order, the members will take their seats according to their rank (e). If a judge-advocate has been appointed, he must be present. The court is considered to be open, and the prisoner may be, but need not be, present during the preliminary proceedings. The charges and summary of evidence in the case of all the

Assembly of court.

(a) Q.R., Sect. VI, paras. 92, 93.

(b) Rules 14, 15.

(c) Rule 77.

(d) Rule 13.

(e) Rule 58.

Ch. V. prisoners, if more than one, will be produced by the president.

Hours of sitting.

35. The hours of sitting will usually be, in the United Kingdom, between 10 a.m. and 4 p.m., or 11 a.m. and 5 p.m.; elsewhere they will be regulated by general officers commanding, but a court should never sit more than eight hours during one day (*a*).

Proceedings before commencement of trial.

36. The first duty of the court will be to read the order convening the court. This order will appoint the president, and detail or appoint the officers; and will notify the judge-advocate appointed. If the order appears on the face of it to be proper, the court will have complied with Rule 22 (A) (i), requiring them to ascertain that the court has been convened in accordance with the Army Act and Rules.

Eligibility and freedom from disqualification of members of court.

37. The court will then proceed to ascertain that the proper number of officers is present, and that each of those officers is capable of serving; that is to say, is eligible and not disqualified to serve on the court-martial, and is of the rank required by the order convening the court (*b*). The eligibility of an officer depends on his status as an officer, that is, on his being subject to military law, and having held a commission for the required period (*c*). Disqualification is a personal question, and depends on his being, or having been, in any manner a party to the case (*d*). The corps to which officers belong, or their rank, is a matter merely for the convening officer, except that the court should ascertain that the provisions of Rules 20 and 21 are observed, and on the trial of a field officer, that none of the officers are under the rank of captain (*e*). If any officer appears not capable of serving he will retire, and one of the officers in waiting will be directed to serve in his stead, and his capacity of serving must be considered in the same manner. It will usually be convenient, where there are officers in waiting, to consider their capacity to serve before proceeding further.

Of president. Of judge-advocate.

38. The court will also ascertain that the president is of proper rank as required by the Army Act (*f*), and that the judge advocate is not disqualified (*g*).

Adjournment if court not properly

39. If at any stage of the above proceedings the court are not satisfied on any point, or the president appears to be ineligible, disqualified, or not of proper rank, or if

(a) Q.R., Sect. VI, para. 102. Rule 64.

(b) Rule 22 (A) (ii) and (iii).

(c) Army Act, ss. 47 (2), (48) (3) (4); Rule 19 (A) and (C).

(d) Army Act, s. 50 (2) (3); Rule 19 (B).

(e) Army Act, s. 48 (7). See also Rules 21 and 22.

(f) Army Act, ss. 47 (4), 48 (9), 182 (4).

(g) Rules 22 (B), 100 (B).

officers by being found to be ineligible or disqualified are obliged to retire so as to reduce the number below the detailed number, the court in some cases must adjourn, and in others will find it expedient to adjourn, for the purpose of consulting the convening authority. Where, however, the number of officers is not reduced below the legal minimum, and the court consider that in the interests of justice and of the service it is inexpedient to adjourn, they can proceed, but must record their reasons (a).

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constituted,
or prisoner
not properly
charged.

40. The court, having ascertained the validity of their constitution, will then consider whether the prisoner to be tried is amenable to their jurisdiction and whether the charge is properly framed ; if not satisfied the court should adjourn and report to the convening authority (b).

Amenability of
prisoner to
jurisdiction.

41. As the court is an open court, the prosecutor may be present during the above proceedings, and may be consulted by the court ; but he has no status before the court until after those proceedings are concluded.

Prosecutor
may be
present.

42. On the conclusion of the above preliminary proceedings, the prosecutor will assume his position as prosecutor, being required then to take his seat, and the prisoner, if not previously present, will be brought before the court. The prisoner, if an officer, will be in the custody of an officer ; if a non-commissioned officer, in the custody of a non-commissioned officer ; and if a private, in the custody of an escort. If necessary, an escort may be employed in any case (c).

Conclusion
of preliminary
proceedings.

43. The prisoner is allowed a seat as a matter of course in the case of an officer, and in any other case when the court think proper. Accommodation is to be afforded on the application of the prisoner, for his friend or counsel.

Seat for
prisoner,
when
allowed.

44. The prisoner will then be asked whether he objects to be tried by the president or any of the officers appointed to form the court. If he does so object, he will be asked to name all the officers to whom he objects. If the objections are more than one, each objection will be taken in succession, that to the junior officer in rank being taken first, except that an objection to the president must be disposed of before any other objection. The prisoner will be asked to state the grounds of his objection, and those grounds will be submitted to the other officers, even though some of them may have been objected to, and will be decided by them. If the objection to an ordinary

Objections
by prisoner
to members
of court.

(a) Rules 18 (A), 22 (C).

(b) Rule 23.

(c) Rule 24 ; Q.R., Sect. VI, para. 103. If the prosecution is instituted at the instance of a civilian, that civilian may be in court and assist the prosecutor, but he cannot speak or take part himself in the prosecution, as (subject to the rule as to counsel) the prosecutor must be in every case subject to military law.

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Procedure if objections allowed.

45. If the officers are by reason of the objections being allowed reduced in number below the legal minimum, the court must adjourn for the appointment of fresh members. If the court is reduced in consequence of objections below the number detailed, but not below the legal minimum, and the majority of the members think that in the interests of justice and for the good of the service it is inexpedient to adjourn, they can record their reasons and proceed with the trial, but otherwise they should adjourn for the appointment of fresh members (*c*). On the appointment of a new president or of fresh members, the like procedure must be followed. Upon any such adjournment of the court the convening officer can, if he pleases, convene a new court, as the trial of the prisoner is not considered to begin until the court are sworn (*d*).

Swearing of members.

46. After the disposal of any objections made by the prisoner the court will be sworn, if there is a judge advocate, by the judge advocate, and if not, by the president, the president being sworn by some member of the court who has been previously sworn. The form of oath is prescribed by the Army Act (*e*).

Of judge advocate and officers attending for instruction.

Of shorthand writer and interpreter.

47. After the members of the court are sworn the judge advocate and officers attending for the purpose of instruction will be sworn, and if it is intended to employ a shorthand writer or interpreter, he must be sworn also ; but a shorthand writer or interpreter may be sworn at any stage of the proceedings (*f*). The prisoner cannot object to a judge advocate, but has a right to object to a person proposed to be sworn as interpreter or shorthand writer on the ground that he is not impartial. The president will therefore inform the prisoner of the person intended to be sworn and ask him if he objects, and if so, on what ground. In certain cases a solemn declaration to the same effect as an oath may be substituted for the oath (*g*).

(*a*) Army Act, s. 51 (3).

(*b*) Army Act, s. 51 (5).

(*c*) Rules 25, 18.

(*d*) Rule 18 (B).

(*e*) Army Act, s. 52 (1) ; and see Rule 27.

(*f*) Rules 28, 72.

(*g*) Army Act, s. 52 (4) ; Rule 28.

48. Where several prisoners are to be tried, whether together or separately, the members of the court may be sworn at the same time to try all of them, but each prisoner must be present, and asked separately if he objects to any member. One case will be taken first, and the others will be taken afterwards in succession (*a*). **Ch. V.**
Court may be sworn to try several prisoners.

49. As soon as the members and other persons are sworn, the prisoner will be arraigned. Arraignment consists in the judge advocate, or if there is none, the president or some member of the court reading each charge to the prisoner and asking him if he is guilty or not guilty of the charge. This will be done with each charge in a charge sheet, and if there is more than one charge sheet and the convening authority directs the prisoner to be arraigned at the same time on all the charge sheets, the same course will be followed with each charge in every charge sheet. It must, however, be recollected that where the prisoner is arraigned on more than one charge sheet, the prosecution, defence, and finding, in the case of each charge sheet, are to be kept separate (*b*). Arraignment of prisoner.

50. Where several prisoners are charged with an offence committed collectively, any one of them may on his arraignment (if he has not done so before by notice to the convening authority) claim to be tried separately, on the ground that the evidence of some one or more of the other prisoners will be material to his defence. The court, if satisfied that the evidence will be material, must allow the claim, unless the nature of the charge—as might be the case (for example) in a charge of mutiny—does not admit of its allowance (*c*). Claim of prisoners to be tried separately.

51. The prisoner before he pleads to a charge may object to its validity, and the court must either overrule the objection, or if they think it valid, adjourn for the purpose of obtaining an amendment of the charge from the convening officer. A mere mistake, however, in the name or description of the prisoner, may always be corrected by the court (*d*). Objection by prisoner to charge before plea.

52. The prisoner may also offer a plea to the general jurisdiction of the court, and give evidence in support of that plea. The court will decide this question of jurisdiction in the same manner as any other question. If the plea be overruled, the court will proceed with the trial; if it be allowed, the court must record its decision and reasons, report to the convening officer, and adjourn. If there is any doubt, the court may refer to the convening Plea to jurisdiction of court.

(*a*) Rule 71.
 (*b*) Rule 62.
 (*c*) Rule 15.
 (*d*) Rules 32, 33.

Ch. V. officer, or record a special decision and proceed with the trial (a).

Plea in bar. 53. A plea in bar of trial may also be offered by the prisoner, on the ground that he has already been convicted or acquitted by a civil court or by a court-martial, or has been dealt with summarily by his commanding officer for the offence, or that the offence has been pardoned or condoned, or was committed more than three years ago. The plea must be recorded as well as the general plea of the prisoner, and may be supported by evidence. If the court find the plea not proven, they will proceed with the trial; if they find it proven, they will notify their finding to the confirming authority and adjourn, unless there is some other charge against the prisoner not affected by the plea. In either case, the finding requires confirmation (b).

Plea of "guilty." 54. If the prisoner pleads guilty, the president should, before the plea is recorded, explain the charge to him so as to prevent his pleading guilty in consequence of ignorance of the exact nature of the charge or of the effect of the plea; and should also point out to him that with a plea of guilty there will be no regular trial, but merely a consideration of the proper amount of punishment, that he can only make a statement in mitigation of punishment, and call witnesses as to character, and that if he wishes to *prove* extenuating circumstances, or indeed to make any kind of defence whatever, he should plead not guilty (c).

Procedure on plea of "guilty." 55. If the prisoner, nevertheless, determines to plead guilty, the court will find him guilty, and will then proceed, after hearing any statement he desires to make, to read the summary or abstract of evidence, and annex it to the proceedings. If there is no summary or abstract, the court must take and record sufficient evidence to enable them to determine the sentence. The prisoner may then make a statement in mitigation of punishment, and the court may allow witnesses to be called in support of that statement. The prisoner may then call witnesses as to character. Should it appear to the court that the prisoner did not understand the effect of his plea of "Guilty," it will be their duty to enter a plea of "Not guilty," and to proceed with the trial (d).

Refusal to plead, &c. 56. Where the prisoner refuses to plead, or pleads unintelligibly, a plea of not guilty must be recorded (e). A plea of not guilty can be withdrawn by the prisoner at

(a) Rule 34.

(b) Rule 36.

(c) Rule 37, and see note.

(d) Rule 37.

(e) Rule 35 (A). As to procedure where a plea of guilty is recorded to one or more of the charges in a charge sheet, and a plea of not guilty to others, see Rule 37 (A).

any time during the trial, and in such case the procedure is substantially the same as in the case of an original plea of guilty (a). Ch. V.
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57. On a plea of not guilty, the prosecutor will, if the case is complicated, make an opening address, giving an outline of the evidence he intends to call, but abstaining from any argument and comments not required to explain the nature of the case. The duty of the prosecutor is fully laid down and explained in Rules 39 and 60, and the notes thereon; and it is only necessary here to observe generally, that the prosecutor is an officer of justice, whose first duty is to ascertain the truth—not to obtain a conviction independently of the truth; and that he is bound to act with scrupulous candour and fairness towards the prisoner and the court, and to conduct the case throughout in a fair and moderate spirit. Any deviation from the above line of conduct will be at once checked by the court (b). Plea of "not guilty."

Duty of prosecutor.

58. On the conclusion of his address the prosecutor will call the evidence for the prosecution. The prisoner is at liberty to cross-examine the witnesses, and the prosecutor may then re-examine them on matters raised by the cross-examination (c). Examination of witnesses for prosecution.

59. At the close of the case for the prosecution the prisoner will be called on for his defence. The course of procedure on the defence differs according to whether the prisoner does or does not call witnesses besides witnesses as to character. The procedure when he calls witnesses as to character only, is the same as when he calls no witnesses. In that case the prosecutor may first sum up his evidence, and the prisoner may then make an address in his defence, and call his witnesses (if any) as to character; and the judge advocate (if any) will then sum up unless both he and the court think a summing up unnecessary, and the court will consider their finding. Defence of prisoner.

60. If, on the other hand, the prisoner calls witnesses besides witnesses to character, he may make an opening address; he will then call his witnesses, who may be cross-examined by the prosecutor and re-examined by the prisoner. The prisoner may then sum up his case in a second address, and the prosecutor may reply. After the reply of the prosecutor the judge advocate (if any) will sum up, unless both he and the court think a summing up unnecessary, and the court will consider their finding (d). In exceptional cases witnesses in reply may be called for Procedure if prisoner calls witnesses other than witnesses to character.

(a) Rule 38.

(b) See Rule 60, and note.

(c) See Rule 39, and note.

(d) Rules 40–42 67.

Ch. V. the prosecution before the second address of the prisoner (a).

Latitude allowed in defence.

61. The prisoner is to be allowed great latitude in making his defence, and will not, within reasonable limits, be stopped by the court merely for making irrelevant observations (b). The court must never forget that the principle of English law is, that an accused person is presumed to be innocent until proved to be guilty, and that, although there are cases where the prosecution may, by proving certain facts, raise a presumption of guilt which the prisoner must rebut, yet, speaking generally, the burden of proof lies on the prosecution, and any doubt as to the sufficiency of proof must be decided in the prisoner's favour.

Court not to be influenced by supposed intention of convening officer.

62. The court, in considering their decision, should not allow themselves to be influenced by the consideration of any supposed intention of the convening officer in sending the case for trial. It may be very right to send for trial a prisoner, who, when tried, ought to be acquitted, and therefore, an acquittal is not in itself a reflection on the convening officer. Even if it were, this should not lead a court to convict, unless the evidence establishes the charge to their satisfaction.

Friend of prisoner.

63. The prisoner is allowed to have a friend to assist him, who may be either a legal adviser or any other person. If the friend is not a solicitor, a barrister, or an officer subject to military law, he can only advise the prisoner and suggest questions to be put by the prisoner to witnesses; but if he is a solicitor, a barrister, or an officer subject to military law, he has the rights and duties of counsel under the Rules (c).

Counsel.

64. Formerly counsel, though they could appear as advisers either of the prosecution or of the defence, could not address the court or examine witnesses orally. But now, by Rules 87-93, counsel who appear on behalf of either prosecutor or prisoner, have the same rights as to addressing the court, examining witnesses, and generally, as the persons whom they represent. A prisoner defended by counsel or by an officer may, however, make a statement, giving his own account of the subject of the charges, but cannot be sworn or cross-examined on it (d). The rights and conduct of counsel are regulated by the above-mentioned Rules, and by the Army Act which provides a

(a) Rule 85 (B).
 (b) Rule 60 (C).
 (c) Rule 86.
 (d) Rule 93.

mode of enforcing the provisions of the Rules and due respect for the court (a). Ch. V.

65. Every witness whether for the prosecution or defence is required either to be sworn or to make a solemn declaration (b). All questions are to be put to the witness direct by the prosecutor, prisoner, or judge advocate, but the witness, in replying, will address the court, and not the prosecutor or prisoner. If any improper question is addressed to the witness, the prosecutor, or prisoner, or judge advocate, or a member of the court, should object to the question before the witness answers it, and the objection will be disposed of before the witness answers (c). During the discussion on any such objection the witness may be ordered to withdraw. When not under examination, witnesses should not, as a rule, be allowed to be in court (d). Examination of witnesses.

66. The evidence of every witness is to be read over to him before he leaves the court, and he may offer, or be called on by the court, to explain or to reconcile answers which may appear inconsistent. The explanation can be entered on the proceedings, only as an addition to the evidence previously recorded, and any discrepancy must, for the sake of justice, and for the information of the officer whose duty it is to confirm the sentence, still appear, although the apparent contradictions may have been satisfactorily explained. Each party is allowed to question the witness as to such explanation (e). Evidence to be read over to witnesses.

67. At the request of the prosecutor or prisoner, a witness may be recalled by leave of the court at any time before the time for the second address of the prisoner. And where the prisoner's witnesses have introduced new matter which the prosecutor could not reasonably have foreseen, he can, with the leave of the court, call or recall a witness to give rebutting testimony. The court can call or recall a witness at any time before the finding, but they should exercise this power with caution: and if they do exercise it, they should put to the witness any question which they are requested by the prosecutor or prisoner to put, unless they consider the question irrelevant (f). The court can also at any time put questions to witnesses, and should ordinarily put any question which the prosecutor Recalling witnesses.

(a) Army Act, s. 129.

(b) Rule 81. With respect to the examination, cross-examination, and re-examination of witnesses, see further, Rules 83-85, and Chapter VI, paras. 104-119.

(c) Rule 82 (A).

(d) Rule 80.

(e) Rule 82 (B).

(f) Rule 85.

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| Ch. V. — | or prisoner requests to be put after the conclusion of the re-examination or cross-examination (a). |
| Expenses of witnesses. | 68. The allowances for the expenses of both military and civilian witnesses in attending courts-martial, are regulated by the Army Allowance Regulations, to which reference must be made. |
| Interpreter. | 69. In India, if an interpreter be required, a qualified military officer is usually appointed. In the colonies, courts-martial usually call on the interpreters to the civil courts, where their services are available. A member of the court-martial is not disqualified from acting as interpreter, and may do so with advantage where the evidence to be interpreted is not likely to be protracted ; but it is obvious that his acting as such through any extended proceedings might bring him into collision with the parties, and be otherwise inconvenient. |
| Remarks on employment of interpreter. | 70. The greatest caution should be exercised to ensure faithful translation, and to guard against misconception of the true meaning of any expression, either from the incompetence, or from the possible bias, of the person employed to interpret. The interpreter should render the very words as closely as possible, and not run the risk of obscuring the proper force of an expression by attempting to give the corresponding idiom, and the court may call on him to explain any part of his translation, and may refer to a second interpreter, if they should entertain any doubt, or be desirous of further information. Upon a question being raised as to the precise meaning of the words used by a witness, they should instantly be taken down in the equivalent English character, when the language has a peculiar alphabet, or, as near the sound as may be, when it is not a written language (b). A party to the trial is at liberty to request the presence and assistance of a private interpreter, and may apply to the court to hear his version of the precise meaning of the witness's words, or an illustration on his part of any phrase which admits of a second construction ; and the court will, according to the circumstances of the particular case, decide on the application, neither allowing unnecessary interruption on the one hand, nor restricting the accurate investigation required by justice on the other. |
| Court is open, but | 71. The court can deliberate in private, and may either withdraw for the purpose or cause the court to be |

(a) Rule 84, and see Rule 85 (D).

(b) There are other cases where it would be desirable to retain the original words in the proceedings, but it should in no case be allowed to remain without a translation, as many words which present no difficulty on the spot, may yet be wholly unintelligible to the confirming authority.

cleared (a) ; but at other times the court must be open to the public, military or otherwise, so far as the room or tent in which the court is held can receive them. It is not usual to place any restriction on the admission of reporters for the press.

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may be
closed for
delibera-
tion.

72. A member of a court who has been absent during any part of the evidence ceases to be a member (b).

Absence of
member.

73. Every member of the court is bound to give his opinion on any question which comes before the court, and cannot abstain from voting. The opinions of members are taken in order, beginning with the junior in rank (c).

Member
cannot
abstain
from
voting.

74. The court must consider their finding in closed court ; and the finding on each charge must be taken and recorded separately. The finding on a charge will be "guilty" or "not guilty," or "not guilty, and honourably acquit him of the same ;" but the court may by a special finding find the prisoner guilty subject to a statement of exceptions or variations. If the court doubt whether the facts proved amount in law to the offence charged, they may refer to the confirming authority before recording their finding (d). In the case of certain specified offences, a prisoner charged with one offence may be found guilty of a cognate offence though not charged : for example, a prisoner charged with stealing may be found guilty of embezzlement and *vice versa* (e). A recommendation to mercy will be recorded in the proceedings, with the reasons of the court, and promulgated and communicated to the prisoner ; but, save as provided by the Rules, any expression of opinion as to anything occurring before the court, and any matter which the court may desire to report must be stated in a separate document (f).

Finding.

75. If the court find the prisoner not guilty of all the charges, they will pronounce their finding in open court, and the prisoner will be discharged (g).

Of "not
guilty."

76. If, on the other hand, the court find the prisoner guilty of any charge, they will proceed to consider their sentence ; though before doing so, all the charges in all the charge sheets (if more than one) must, unless otherwise directed by the convening officer, be tried : and one sentence only can be awarded in respect of all the offences of which the prisoner is found guilty (h).

Of "guilty."

(a) Army Act, s. 53 (5), Rule 63.

(b) Rule 68.

(c) Rule 69 (C).

(d) Rules 43, 44, and App. II to Rules. Form of Proceedings in App. II, par. (8), p. 738.

(e) Army Act, s. 56.

(f) Army Act, s. 53 (9). See note, Rules 49, 94 (E).

(g) Army Act, s. 54 (3).

(h) Rule 48.

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Evidence of
former con-
victions.

Wording,
date, and
signature of
sentence.

Proceedings
of court.

General
observa-
tions on
duty of a
court-
martial in
awarding
sentence.

Joint
offenders.

77. The court should, unless it seems to be impracticable, before considering their sentence take evidence of the prisoner's former convictions (if any), and of the other particulars mentioned in Rule 46.

78. The sentence must be one of those allowed by the Army Act (a). Consequently, a non-commissioned officer cannot be sentenced to a reprimand, nor can an army schoolmaster be sentenced to reduction to the ranks. The sentence should follow the forms given (see Appendix II to the Rules), or if no form seems exactly applicable, should follow as nearly as possible the terms of the Army Act, and it will be dated and signed by the president. If there is a judge advocate, he also will sign the proceedings. The proceedings will then be sent for confirmation (b).

79. The "proceedings" are an entire record of the whole of the transactions of the particular court (c). They are kept under the orders of the judge advocate or president, who is responsible for their accuracy and completeness. The form in which they are required to be recorded will be found at p. 724.

80. In deliberating on their sentence a court-martial should ever remember that the object of awarding punishment is the maintenance of discipline, and should bear in mind the considerations to which their attention is directed by the Queen's Regulations (d). The proper amount of punishment to be inflicted is the least amount by which discipline can be efficiently maintained. While the exigencies of discipline, apart from the circumstances of the particular case, may render a severe sentence necessary, yet the court should not inflict a severe sentence merely because it has the power of a general court-martial; and if a general court-martial is of opinion that the case is one for which a sentence of a month's imprisonment is sufficient for the maintenance of discipline, the court should not inflict a heavier sentence merely because the court is a general court-martial. So, again, if the prisoner has elected to be tried by a district court-martial, instead of submitting to the jurisdiction of his commanding officer, his punishment should not on that ground be increased; in fact it can hardly in ordinary circumstances be necessary that the court should give a heavier sentence than that which the commanding officer has power to award.

81. Where several offenders are found guilty of the

(a) See s. 44; and as to Indian officers, s. 180 (2); as to warrant officers, s. 182; and as to non-commissioned officers, s. 183.

(b) Rule 50.

(c) See Rules 45, 94-99.

(d) Q.R., Sect. VI, para. 106.

same offence, it may often be proper to award different degrees of punishment. In some cases it would appear that the degrees of criminality of the offenders are different; while in others regard will be paid to their relative rank. For example, a non-commissioned officer should as a rule be more severely punished than a private soldier concerned with him in the commission of the same offence.

82. The court has power to punish a prisoner for contempt, but its members should not allow themselves to award an unduly severe punishment through irritation at the conduct of the prisoner on his trial, or in consequence of the nature of his defence. If persons mixed up in the transaction forming the subject of the trial have been witnesses at the trial, the prisoner is entitled to impeach their motives and charge them with criminality; and if he oversteps the boundary of propriety in this respect, by making entirely groundless charges against them, or against other innocent persons, he can, if necessary, be tried for making false accusations (a).

Further observations.

83. Offences, considered in reference to the award of sentence, may be committed with or without premeditation, and with or without provocation; and beginning with the highest degree of criminality may be classified as follows:

Further observations; classification of offences.

- (1.) Offences committed with premeditation and without provocation:
- (2.) Offences committed with premeditation and with provocation:
- (3.) Offences committed without premeditation and without provocation:
- (4.) Offences committed without premeditation and with provocation.

In cases of doubt as to the proper amount of punishment to be awarded, it will be useful to bear in mind this classification.

84. Another material element in crime in reference to the individual is its frequency; in other words an habitual offender deserves far greater punishment than an infrequent offender; and in every case if possible the first offence should be treated leniently.

Repeated offences of individual.

85. Military offences, however, must be considered in reference to circumstances other than those immediately connected with the individual offender. When crime is prevalent an example may be necessary, and a severe punishment may justly be awarded in respect of an

General prevalence of crime.

(a) See s. 27, and Rule 60 (C), and notes.

Ch. V. offence which otherwise would receive a more lenient punishment. In such cases the punishment for the offence must be regarded in reference to the effect to be produced on the military body to which the offender belongs, rather than in reference to the act of the individual himself.

Insubordinate language.

86. Military offences, unlike civil offences, frequently consist in words, *e.g.*, the use of insubordinate language. As a general principle, the improper use of words should not be treated with the same severity as offences consisting in acts. Further, great care should be taken in discriminating between mere angry or irritable expressions, and words indicating a deliberate intention to be insubordinate or to resist lawful authority. A soldier frequently uses violent language which is a mere outburst of momentary irritation or excitement, without at all intending to be insubordinate. Again, allowance must be made for the coarse expressions which a man of inferior education will often use as mere expletives. Such expressions may be insubordinate if used to a commissioned officer, and not so when used to a non-commissioned officer, or when used under one set of circumstances, and not when used under another. Language, therefore, should be construed with due regard to all surrounding circumstances; and the intention of the man in using it should be carefully considered, before it is held to constitute the grave offence of using threatening or insubordinate language to a superior officer.

Discipline, how best maintained.

87. In all cases the whole corps should have an opportunity of seeing that the punishment awarded to any individual is not more than is necessary, in the interests of the corps itself, for the maintenance of discipline. Without discipline all military bodies become mobs, and worse than useless; but discipline enforced by punishment alone is a poor sort of discipline, which would not stand any severe strain. What must be aimed at is that high state of discipline, which springs from a military system administered with impartiality and judgment, so as to induce in all ranks a feeling of duty, and the assurance that, while no offence will be passed over, no offender will be unjustly dealt with.

Recommendation to mercy.

88. As the court have (save in the case of conviction of an officer under s. 16 of the Army Act, for conduct unbefitting an officer and gentleman, and in the case of a conviction for murder under s. 41 (2)) absolute discretion as to the sentence, a recommendation to mercy will be exceptional (a). It will usually be required only where

(a) Army Act, s. 53 (9), Rule 49.

the offence is in itself very serious, and where the court, though unwilling to pass a lenient sentence, lest the offence should be considered a venial one, think that, owing to the prisoner's character or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. As a rule, the court will be able to adjust the sentence according to what, in their judgment, the prisoner should suffer, having regard not only to the offence, but to the attendant circumstances and his character, so that the award may be final and carried into effect. It is indisputable that crimes are more effectually prevented by certainty than by severity of punishment.

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(iii.) *Proceedings subsequent to Finding and Sentence of Court-Martial.*

89. The acquittal of a prisoner by court-martial on any charge is final, but a conviction and sentence are not valid until confirmed by superior authority (a). Where there is a judge advocate he is responsible for transmitting the proceedings for confirmation: where there is not a judge advocate, this duty devolves on the president.

Confirmation of proceedings.

90. The finding and sentence of a regimental court-martial are to be confirmed by the convening officer, or by the officer having authority to convene the court at the time of the submission of the proceedings (b).

Of regimental court-martial.

91. The finding and sentence of a district court-martial are to be confirmed by an officer authorised to convene general courts-martial, or deriving authority to confirm them from an officer authorised to convene general courts-martial (c).

Of district court-martial.

92. The finding and sentence of a general court-martial are to be confirmed by Her Majesty, or by an officer deriving authority to confirm either immediately or mediately from Her Majesty (d).

Of general court-martial.

93. This authority, where given by the Queen, is given by the warrant respecting courts-martial mentioned above. Any warrant, whether issued by the Queen or by an officer, may reserve any of the powers which would otherwise be conferred by it (e).

Warrant for general court-martial.

94. The warrant issued to a general officer in the United Kingdom does not usually give authority to confirm the findings and sentences of general courts-martial, which,

In the U.K.

(a) Army Act, s. 54 (3) (b).

(b) Army Act, s. 54 (1) (a).

(c) Army Act, s. 54 (1) (c), and s. 123.

(d) Army Act, s. 54 (1) (b), and s. 122. As to field general courts-martial, see s. 54 (1) (d), and Rule 119.

(e) As to promulgation of proceedings, see Rule 53, and Q.R., Sect. VI, para. 116. See para. 22, above.

(M.L.)

Ch. V. consequently, in the United Kingdom require confirmation by the Queen.

In India and elsewhere abroad.

95. The warrant issued to an officer commanding abroad usually gives authority to confirm the findings and sentences of general courts-martial, and to delegate that power. Where the officer is the Commander-in-Chief in India, and sometimes where he is commanding-in-chief on active service, the power of confirmation is given without any reservation, except at the option of the officer. In other cases, besides the optional reservation, the warrant reserves for confirmation, if in India by the Commander-in-Chief in India, and if elsewhere by the Queen, the finding and sentence, where a commissioned officer (a) is sentenced to death, penal servitude, cashiering, or dismissal. An officer commanding a force on active service serving in India, or proceeding from India, usually holds his warrant from the Commander-in-Chief in India; but if he comes under the command of an officer holding a warrant from the Queen, he can only exercise the confirming power by delegation from that officer.

Delegation as to district court-martial.

Power of confirming authority to send back finding and sentence for revision.

96. Every officer empowered to convene general courts-martial has authority to confirm the findings and sentences of district courts-martial, and to delegate that power (b).

97. The confirming authority can order a revision once only; and the court must reassemble and consider, without taking evidence, either the finding or the sentence, or both of them, as directed. If the finding only is sent back, and the court do not adhere to it, the court must also reconsider their sentence; but if the sentence only is sent back, they cannot revise the finding (c). If the court adhere to their finding and sentence, the confirming authority can only either confirm or refuse confirmation. A conviction and sentence are not valid until confirmation, and therefore a refusal of confirmation in effect annuls the whole proceeding, except where confirmation is withheld wholly or partly for the purpose of referring to superior authority (d).

Mitigation, remission and commutation of punishment.

98. The confirming authority can, when confirming the sentence, whether after revision or without it, mitigate, remit, commute, or suspend the punishment (e). After

(a) This does not apply to a native commissioned officer in a colony, the finding and sentence on whom may, in all cases, be confirmed by the general officer commanding the forces in such colony.

(b) See Forms of Warrants, p. 766, *et seq.*

(c) Army Act, s. 45 (2), Rule 52.

(d) Army Act, s. 54 (5) (b), and note. As to remarks by confirming officer and promulgation, see Q.R., Sect. VI, paras. 112, 113, 116, Army Act, s. 53 (4), Rule 53, 96 (A) note. A refusal to confirm should be signified in writing on the proceedings signed by the confirming authority. See also para. 5, above.

(e) Army Act, s. 57 (1), and note. Rule 54.

confirmation the punishment can only be mitigated, remitted, or commuted by the Queen, or the Commander-in-Chief, or the officer commanding the district or station where the prisoner is, or any prescribed officer (a); also in India by the Commander-in-Chief in India; also in a colony or elsewhere, by the officer commanding the forces. But as this power cannot be exercised by any officer inferior to the authority who confirmed the sentence, an officer in the United Kingdom has no power to mitigate, remit, or commute a sentence passed by a general court-martial in the United Kingdom; and in the case of general courts-martial held elsewhere, can only do so if his command is not inferior to that of the officer who confirmed the sentence, unless in either case he acts under orders from superior authority.

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99. Sentence of death in a colony requires not only confirmation by the military authority, but also (save when passed in respect of an offence committed on active service) approval by the governor of the colony. In India, however, such approval is only required where the offence is treason or murder; but both in India and a colony a sentence of penal servitude for any offence tried as a civil offence under s. 41, requires the approval of the governor. The approval is required to be given in India by the Governor-General (b).

Approval of sentence of death in colony.

100. An officer who confirms a sentence is responsible for seeing that the sentence is carried into effect, and for this purpose he will, where necessary, obtain the approval above required for a sentence of death, and in all cases will give the necessary directions for the execution of the sentence. If the sentence is approved by the Queen, these directions will be given by the Commander-in-Chief.

Directions for execution of sentence.

101. Sentences of penal servitude, whenever passed, are (subject to the proviso mentioned in para. 103) required to be executed in the United Kingdom, and have the same effect as sentences of penal servitude passed by a civil court in the United Kingdom. Provision is made for bringing a penal servitude prisoner from any place out of the United Kingdom to a prison in the United Kingdom; and when once he is there he comes under the authority of the Home Secretary (c).

Execution of sentence of penal servitude.

102. Sentences of imprisonment exceeding twelve months, wherever passed, are also (subject to the proviso mentioned in para. 103) to be executed in the United Kingdom. If not brought to the United Kingdom, a

Of imprisonment.

(a) Army Act, s. 57 (2); and as to prescribed officer, see Rule 125.

(b) Army Act, s. 51 (4) (7) (8) (9).

(c) Army Act, ss. 58-62.

Ch. V. — prisoner has to undergo his imprisonment either in military custody, or in some authorised prison. He can, however, be temporarily confined in any other prison. In the United Kingdom sentences of imprisonment may be undergone in military custody, *i.e.*, in a provost prison; but where they exceed forty-two days, or the limit prescribed from time to time for sentences to be passed in provost prisons, can be undergone only in public prisons, whether civil or military (*a*).

Further provisions.

103. An offender sentenced to either penal servitude or imprisonment need not be brought to the United Kingdom, if he belongs to a class with respect to which the Secretary of State has declared that by reason of climate or place of birth or of enlistment, it is not beneficial to the prisoner to transfer him to the United Kingdom. Nor need an offender sentenced to imprisonment be brought to the United Kingdom, if the court or other authority mentioned in s. 131 for special reasons otherwise orders (*b*).

(*a*) Army Act, ss. 63-66. Q.R., Sect. VI, para. 173, and see for the mode in which a term of imprisonment is to be awarded, Q.R., Sect. VI, para. 108; and generally as to disposal of prisoners, military convicts, and military prisoners, &c., Q.R., Sect. VI, paras. 165-242.

(*b*) Army Act, s. 131 (2), the note to which states the regulations made by the Secretary of State.

CHAPTER VI.

EVIDENCE.

Introductory (a).

1. The rules of evidence are the rules which regulate the mode in which questions of fact may be determined for judicial purposes. The object of every criminal trial is, or may be, to determine two classes of questions—questions of fact and questions of law. If the accused person pleads guilty there is no question of fact involved in the trial. But if he does not, he raises two questions or issues, first, whether the facts charged against him happened, and, next, if they did happen, what is their legal consequence.

Meaning of
"Rules of
Evidence."

2. In trial by jury these two questions are answered by different persons. The jury, *under the guidance of the judge*, find the facts. The judge lays down the law. It was with reference to trial by jury that the English rules of evidence were originally framed, and it is to this mode of trial that they are still primarily applicable. They are, in fact, the rules in accordance with which a judge guides a jury. In trials before courts-martial, the members of the courts both find the facts and lay down the law, and thus perform the functions of both jury and judge. It therefore becomes their duty, when applying their minds to questions of fact, in the capacity of jurymen, to consider themselves bound by the rules which, in the case of an ordinary trial by jury, are laid down by the judge.

English
rules of
evidence
primarily
applicable
to trial by
jury.

3. Now, a jurymen is supposed to bring with him to the consideration of the questions which he has to try common sense, and a general knowledge of human nature and of the ways of the world. But he is not supposed to bring with him any special knowledge enabling him to answer the particular questions of fact raised in the trial. His knowledge of these matters is derived from what is proved to him at the hearing. The means of proof, or evidence, usually consists of statements made by witnesses under examination, or of documents produced for inspection, and is therefore commonly classified as being either oral evidence or documentary evidence. But the jury, or, in the

Nature of
evidence.

(a) The statements of law in this chapter are mainly taken from Mr. Justice Stephen's Digest of the Law of Evidence.

Ch. VI. case of trials by court-martial the members of the court, may supplement by direct information the knowledge derived from these sources. Thus they may inspect for themselves anything sufficiently identified by evidence, and produced in court as material to their decision; or they may go to view any place the sight of which may help them to understand the evidence.

Difference between judicial and non-judicial inquiries.

4. There is no difference in principle between the method of inquiry in judicial and in extra-judicial proceedings. In either case a person who wishes to find out whether a particular event did or did not happen, tries in the first place to obtain information from persons who were present and saw what happened (*direct evidence*), and, failing that, to obtain information from persons who can tell him about facts from which he can draw an inference as to whether the event did or did not happen (*indirect evidence*). But in judicial inquiries the information given must be on oath, and be liable to be tested by cross-examination, and there are certain rules of law which exclude from the consideration of a jury particular classes of indirect evidence which an ordinary inquirer would naturally take into consideration. Statements so excluded are said to be "not admissible as evidence," or "not evidence" (*a*). And if a member of a court-martial is in doubt whether a statement which it is proposed to make to him is, or is not, admissible as evidence, the most useful advice that can be given to him is, first to use his common sense as to whether the matter proposed to be proved has any practical bearing on the question which he has to try; and, if he thinks that it has, then to consider whether it falls within any one of the negative or exclusive rules of law to which reference has been made.

Reasons for excluding certain classes of evidence in judicial inquiry.

5. The answer to the question why particular statements should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following:—

1. It assists the jury.
2. It secures fair play to the accused.
3. It protects absent persons.
4. It prevents waste of time.

It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or

(a) The two phrases illustrate the wider and narrower sense of the term "evidence." In its narrower sense it means that kind of evidence which is recognised by courts of law.

have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused, because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less connected.

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6. The rules of evidence to be followed by courts-martial are to be those adopted in courts of ordinary criminal jurisdiction in England (*a*). These rules are to be found in the ordinary text books on the subject, such as Taylor on Evidence, Roscoe's Digest of the Law of Evidence in Criminal Cases, and Mr. Justice Stephen's Digest of the Law of Evidence; but as only a limited number of these rules are from the nature of the case applicable to proceedings before courts-martial, it is thought that it may be useful to state and illustrate shortly the most important of those which are so applicable.

Evidence in courts-martial to be governed by English law.

7. The principal matters with which the rules of evidence are concerned may, for the purpose of this chapter, be classified as follows :—

Matters with which rules of evidence are concerned,

- (i.) *What must be proved.*
- (ii.) *What facts are assumed to be known* (judicial notice).
- (iii.) *By which side proof must be given* (burden of proof).
- (iv.) *What statements are admissible as evidence* (admissibility of evidence).
- (v.) *When admissions or confessions may be admitted as evidence.*
- (vi.) *Who may give evidence* (competency of witnesses).
- (vii.) *What questions need not be answered and what documents need not be produced* (privilege of witnesses).
- (viii.) *How evidence is to be given.*

(i.) *What must be proved.*

8. What must be proved, in order to obtain a conviction, is the particular charge brought. As a general rule every charge alleges, or ought to allege, a specific offence

Charge brought must be proved.

(a) Army Act, ss. 127 and 128; and Rule 73.

Ch. VI. constituting a breach of a specific enactment (a) ; and subject to certain exceptions, it is of this offence, and of this offence alone, that the person charged can be convicted. The reason for the rule is the unfairness of requiring a person to meet a charge for which he is not prepared. And the exceptions will be found not to conflict with this reason, since they relate either to cases where the distinction between two offences is mainly technical ; or to cases where the distinction is one of degree, but not of kind, and the prisoner, having been charged with the more serious, is allowed to be convicted of the less serious offence. The former class of cases is illustrated by the enactments providing that a person charged with felony may, in certain cases, be convicted of a misdemeanor ; and that a person charged with stealing may be convicted of embezzlement and *vice versa*. The second class is illustrated by the common law rule that on an indictment for murder, if the prosecutor fails in proving malice prepense, the prisoner may be convicted of manslaughter ; and by the provisions contained in s. 56 of the Army Act.

Substance
only of
charge need
be proved.

9. It is the substance only of the charge that need be proved. Allegations which are not essential to constitute the offence, and which may be omitted without affecting the validity of the charge, do not require proof, and may be rejected as surplusage (b). In some cases, as in charges against a sentinel for misbehaviour on his post, or in a charge for not giving immediate notice of desertion (c), the time or place of the offence is material ; but as a rule it is not so. Where the court think that the facts proved differ materially from the facts alleged, they are empowered by Rule 44 to record a special finding, instead of a finding of "Not guilty."

(ii.) *What facts are assumed to be known.*

Judicial
notice.

10. The court are said to take judicial notice, in other words not to require evidence, of any facts which are so generally known as not to require special proof. By Rule 74 the court are expressly authorised to take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Thus, evidence need not be given as to the relative rank of officers, as to the general duties, authorities, and obligations of different members of the service, or generally as to any matters

(a) See Rules 9-12, and 23. As to offences of conduct to the prejudice of good order and military discipline, see s. 40 of the Army Act, and Chapter III, para. 32.

(b) See Rules 9-12, and 23, and as to particulars of time and place in the charge, see Note as to use of Forms of Charges (1*)-(22), at the beginning of Appendix I to the Rules.

(c) See Army Act, ss. 6 (1) (k), 14 (2),

which an officer, as such, may reasonably be expected to know (a). Nor, again, would it be necessary to prove that an important battle was fought on the 18th of June, 1815. Ch. VI.
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11. Among the matters of which it is the duty of all judges to take judicial notice may be mentioned :—Acts of Parliament : the general course of proceedings and privileges of Parliament, the date and place of the sittings of each House, but not transactions in their journals ; the course of proceedings and rules of practice in the Supreme Court of Judicature ; the accession of the Queen ; the existence and title of every State and Sovereign recognised by the Queen ; the Great Seal, the Privy Seal, the Seals of the Superior Court of Justice ; the seal of any notary-public in the British Dominions, and various other seals ; the extent of the territories under the dominion of the Crown, and the territorial and political divisions of the different parts of the United Kingdom ; the ordinary course of natural and artificial divisions of time, and the meaning of English words ; and all other matters which they are directed by any statute to notice. Matters of which judicial notice will be taken.

(iii.) *By which side proof must be given.*

12. In considering the practice as to the burden of proof regard must be had to two rules ; *first*, that every man is presumed to be innocent until he is proved to be guilty ; and, *second*, that he who asserts the affirmative of a fact must prove it. It follows from both these rules that it is incumbent on the prosecution in the first instance to give evidence of the commission of the crime, or of facts from which the court may reasonably infer that it has been committed, and that then, but not till then, the prisoner is bound to prove any facts from which he wishes the court to infer his innocence. It occasionally happens that the two rules are in conflict, in which case the second must give way to the first. Thus, when the charge is a culpable omission or a breach of duty, the person who makes the charge is bound to prove it, though it may involve a negative, unless, as is frequently the case, the subject of the negative assertion is peculiarly within the knowledge of the prisoner, in which case he must prove it as a matter of defence. For instance, in a charge of leaving the ranks or a post without orders, absence without leave, releasing a prisoner without authority, or detaining a prisoner unnecessarily (b), it would lie on the person charged to prove that the requisite orders, leave, or authority had been Burden of proof.

(a) See s. 6. (1) (e), 8, 10 (3), 17 and 25 (1), of the Army Act, as illustrations of matters which would be presumed to be within the general military knowledge of an officer.

(b) See Army Act, ss. 5 (1), 6 (1) (b), 15, 20 (1), 21 (1),

Ch. VI. given, or that the necessity existed. On the other hand, when a prisoner is charged with breaking out of barracks(a), it would lie on the prosecutor in the first instance to prove that the prisoner had no right to quit them.

Shifting of burden of proof.

13. As the trial goes on, the burden of proof may be shifted from the prosecutor to the prisoner by the proof of facts which raise a presumption of his guilt. In considering the amount of evidence necessary to shift the burden of proof, the court has regard to the opportunities of knowledge with respect to the fact to be proved which may be possessed by the prosecutor and prisoner respectively (b).

Presumption of intent from unlawful act.

14. Where it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification or excuse lies on the prisoner. On a charge of murder the law presumes malice from the act of killing, and throws on the prisoner the burden of disproving the malice by justifying or extenuating the act. On a charge of wilfully maiming or injuring with intent to render unfit for service, the intent will be presumed if it is shown that the act was wilfully done (c).

(iv.) *What statements are admissible as Evidence.*

Rules as to admissibility of evidence.

15. It has been remarked above that there are certain rules which exclude from consideration on judicial inquiries classes of evidence which would be taken into consideration on ordinary inquiries. The most important of these negative or exclusive rules may, with reference to criminal proceedings, be stated as follows :—

Rule of relevancy.

I. Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge.

Rule of best evidence.

II. The evidence produced must be the best obtainable under the circumstances.

To these may be added, subject to important qualifications :

Hearsay.
Opinion.

III. Hearsay is not evidence.

IV. Opinion is not evidence.

I. Rule of relevancy.

16. The form in which the first rule is expressed shows the vagueness, and, it may be added, the necessary vagueness, of its character. What classes of facts "tend immediately" to prove or disprove a charge? Or, to use a more technical expression (d), what facts are "relevant?"

(a) Army Act, s. 10 (4).

(b) See Stephen, Dig. Ev., arts. 95, 96.

(c) See Army Act, s. 18 (2).

(d) See Rule 73 (A).

To this question no direct answer can be given. No precise line can be drawn between "relevant" and "irrelevant" facts. All that can be done is to state certain subordinate rules illustrating the kind of line which experience has induced courts to draw with respect to particular classes of facts. Common sense must supply the rest.

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17. In the first place the character or general reputation of the accused person is not admissible as evidence of his guilt. This rule is most important to prevent the injustice which might arise from prejudice or unpopularity. "Give a dog a bad name and hang him," represents the popular instinct. "A man shall not be convicted because he has a bad name," says the law. For this reason the prosecutor may not give evidence of character, except to rebut evidence to a contrary effect given on behalf of the prisoner (a).

Character
not
evidence for
prosecu-
tion.

18. On the other hand, the prisoner may call witnesses to speak generally as to his character. He may put in evidence particular instances where his conduct has been publicly approved by superior officers; or, if a soldier, may call for the defaulters' book to prove that there are no entries against him, or none of a serious character.

Character
admissible
as evidence
for defence.

19. Evidence of general good character cannot avail the prisoner against evidence of the fact, but where some reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence; and where intention is a principal ingredient in the offence, or where presumptive proof only is adduced, evidence as to character, bearing on the charge, may be highly important, and serve to explain the prisoner's conduct. On a trial for treason, Lord Kenyon observed, "An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a prisoner; and when those who give such a character in evidence are entitled to credit, their testimony should have great weight with the jury." On a charge of murder, where malice is the essence of the crime, expressions of goodwill and acts of kindness by the prisoner towards the deceased, are always considered important evidence, as showing what was his general disposition towards the deceased, and leading to the conclusion that his intention could not have been that imputed to him. On a charge of stealing, character for honesty may be entitled to great weight. So also on a charge implicating the courage of a soldier, character for bravery and resolution might be of vast importance. But it would be manifestly absurd, and

Effect of
evidence as
to character.

(a) As to reply to witnesses to character called by prisoner, see Rules 40 (D), 85 (C). The Court may also, after conviction, for their guidance in determining the sentence, take evidence as to the prisoner's character (Rule 46).

Ch. VI. irrelevant, on a charge of stealing, to allow character for bravery to weigh in the scale of proof: or on a charge of cowardice, to be biassed by a character of honesty. General character, unconnected with the charge, though it may not weigh with the court, except in awarding punishment in discretionary cases, may essentially serve the prisoner, by influencing the superior with whom it rests to mitigate or remit the sentence.

Evidence of facts tending to show general disposition not admissible.

20. Evidence that the person accused of an offence committed a like offence or acted in a similar manner on another occasion, is not admissible merely for the purpose of showing that he has a general disposition to commit such offences. Thus, on a charge of murder, the prosecutor cannot give evidence of the prisoner's conduct in respect to other persons for the purpose of proving a bloodthirsty and murderous disposition. So, on a charge against a sentry of having been asleep on his post on a particular occasion, evidence that he had been found asleep on his post on other occasions would not be admissible for the purpose of showing that he would be likely to commit the offence; and on a charge of insubordination, evidence of insubordinate conduct on other occasions would not be admissible for the purpose of showing a tendency to insubordinate conduct.

Where several offences connected, evidence of one admissible as proof of another.

21. But where several offences are so connected with each other as to form part of an entire transaction, evidence of one is admissible as proof of another. On a charge of stealing, for example, though it is not material in general to inquire into any other taking of goods besides that specified in the charge, yet for the purpose of ascertaining the identity of the person, it is often important to show that other goods which had been upon an adjoining part of the same house and grounds, were taken in the same night, and afterwards found in the prisoner's possession. This is strong evidence of the prisoner having been near the owner's house on the night of the robbery; and from that point of view it is material. Thus, also, to prove the crime of arson, it may be shown that property which had been taken out of the house at the time of the firing was afterwards found secreted in the possession of the prisoner. So, on a charge of desertion, it may be admissible to inquire into the fact of (*not* the facts attending) a highway robbery which had been committed by the prisoner on the night on which he absented himself, and for which he had been tried and convicted by a civil court. The crime of desertion, depending on the intention not to return, might be inferred, in connection with other circumstances, from the commission of a heinous offence; and such collateral evidence is admissible to prove the intention of the accused,

22. And where intention, knowledge, good or bad faith, malice, or any other state of mind, is a necessary ingredient of the offence charged evidence may, for the purpose of proving the existence of such a state of mind, be given of similar acts committed by the accused on different occasions. Thus, although on a charge of murder evidence as to the prisoner's disposition, is, as has been stated, inadmissible, yet former attempts by him to assassinate the deceased are admissible as a proof of intention. So also evidence is admissible as to former menaces or expressions of vindictive feeling towards the deceased. Again, on a charge of uttering base coin, proof that the prisoner uttered base coin on other occasions is admissible as evidence that he *knew* the coin to be base.

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Facts showing intention; knowledge, good faith, &c.

23. In support of a charge for malicious, disrespectful, or unbecoming language, addressed by word of mouth, or written to, or used of, a superior officer at a stated time, or in a particular letter, after having proved the words in the charge, the prosecutor, to show the spirit and intention of the prisoner, may prove also that he spoke or wrote either disrespectful or malicious words on the same subject, either before or afterwards, or that he published or disseminated copies of the letter set forth as disrespectful in the charge. This evidence is admissible, not in aggravation of the crime charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; and the prisoner may give in evidence, as negating a deliberate purpose, or as palliating, though not justifying his conduct, that he had been provoked to act as he had by the conduct of his superior towards him. So, on an indictment for malicious shooting, if it is questionable whether the shooting was by accident or design, proof may be given that at another time the prisoner intentionally shot at the same person.

Facts showing intention; (further illustrations).

24. Where intention is put in issue by the nature of the charge, as where a prisoner is charged with treason, or with a design to undermine the influence of the commanding officer, an inquiry may be allowed into the conduct and sentiments of the prisoner on particular occasions, but with reference only to the overt act laid or specified in the charge, and to the transactions proved against him. The intention of one particular act may be best evinced by other contemporaneous actions, but great caution is needed to prevent injustice to the prisoner by extending the inquiry to matters wholly unconnected with the charge. It would be the height of injustice to allow such an attack upon him as would involve the necessity of his entering unprepared and at once on the defence of every action of his life.

Facts showing intention; (further illustrations).

25. Again, where there is a question whether a person Evidence as

Ch. VI. committed an offence, evidence may be given of any fact supplying a motive or constituting preparation for the offence, of any subsequent conduct of the person accused, which is apparently influenced by the commission of the offence, and of any act done by him, or by his authority, in consequence of the offence. Thus, evidence may be given that, after the commission of the alleged crime, the prisoner absconded, or was in possession of the property, or the proceeds of property, acquired by the crime, or that he attempted to conceal things which were or might have been used in committing the crime, or as to the manner in which he conducted himself when statements were made in his presence and hearing.

Acts of conspirators.

26. In cases of conspiracy, the charge against one conspirator may be supported by evidence of anything done, written, or said, not only by him, but by any other of the conspirators, in furtherance of the common purpose. On the consideration of a charge of mutiny, or exciting mutiny, evidence of this kind may be received against a particular prisoner, after *prima facie* proof has been given of the existence of a plot, and of the connection of the accused therewith.

Statements not forming part of conspiracy inadmissible.

27. Statements of the class above described are admissible as evidence, because they form part of the transaction to which the inquiry relates (a). But a statement made by one conspirator about an act done in furtherance of a conspiracy, in other words, a statement which is merely a relation or narrative of some event forming part of the conspiracy, but is not itself part of the conspiracy, falls within the rule of hearsay, to which reference will be made hereafter, and is not admissible as evidence against another conspirator, unless made in his presence. In consequence of this distinction, the admissibility of writings often depends on the time when they are proved to be in the possession of fellow conspirators, whether it was before or after the prisoner's apprehension.

Illustrations of evidence admissible on charge of conspiracy.

28. Thus, on the trial of Watson for a treasonable conspiracy, some papers, containing a variety of plans and lists of names, which had been found in the house of a co-conspirator, and which had a reference to the design of the conspiracy, and were in furtherance of the plot, were held to be admissible as evidence against the prisoner. All the judges were of opinion that these papers ought to be received in the case, inasmuch as there was strong presumptive evidence that they were in the house of the co-conspirator before the prisoner's apprehension, for the room in which the papers were found had been locked up by one of the conspirators. And the judges distinguished

(a) See below, paras. 51, 52.

the point in this case from a case cited where the papers were found, after the prisoner's apprehension, in the possession of persons who possibly might not have obtained the papers until afterwards. Ch. VI.
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29. As, in trials for conspiracies, whatever the prisoner may have done or said at any meeting alleged to have been held in pursuance of the conspiracy may be given in evidence against him on the part of the prosecution, so, on the other hand, any other part of his conduct at the same meeting will be allowed to be proved in his behalf: for his intention and design at a particular time are best explained by a complete view of every part of his conduct at that time, and not merely from the proof of a single isolated act or declaration. Acts and declarations of prisoner when evidence for him in conspiracy cases.

30. The meaning of the rule that the evidence produced must be the best obtainable under the circumstances, is this. No evidence which leads us to suppose that other and better evidence remains behind can be admitted, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence. II. Rule as to best evidence.

31. The rule in question is chiefly applicable to documentary evidence, and is usually applied in the form of the two well-known sub-rules: (1) That a verbal account of the contents of a document can never be received if the document itself is obtainable: (2) That, subject to certain exceptions, a copy of a document is not admissible when the original document can be produced. In these cases the document itself is said to be primary, whilst the verbal account, or the copy, is called secondary evidence. Rule chiefly applicable to documents.
Primary and secondary evidence.

32. Primary evidence of the contents of a document is given by producing the document for the inspection of the court. Primary evidence of document.

33. If the document is of a kind which is required by law to be attested, but not otherwise (a), it is also necessary to call an attesting witness to prove its due execution. But this rule is subject to the following exceptions:— Attested and unattested documents.

-(a) If it is proved that there is no attesting witness alive, and capable of giving evidence, then it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

(b) If the document is proved, or purports to be, more than thirty years old, and is produced from what the court considers to be its proper custody, an

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attesting witness need not be called, and it will be presumed without evidence that the instrument was duly executed and attested.

Distinction between private and public documents.

34. The rule as to the inadmissibility of a copy of a document is applied much more strictly to private than to public or official documents.

Secondary evidence of private documents, when admissible.

35. Secondary evidence may be given of the contents of a private document in the following cases :—

- (a) Where the original is shown or appears to be in the possession of the adverse party, and he, after having been served with reasonable notice to produce it, does not do so.
- (b) Where the original is shown or appears to be in the possession or power of a stranger not legally bound to produce it, and he, after having been served with a writ of *subpoena duces tecum*, or after having been sworn as a witness and asked for the document, and having admitted that it is in court, refuses to produce it.
- (c) Where it is shown that proper search has been made for the original, and there is reason for believing that it is destroyed or lost.
- (d) Where the original is of such a nature as not to be easily movable (a), or is in a country from which it is not permitted to be removed.
- (e) Where the original is a document for the proof of which special provision is made by any Act of Parliament, or any law in force for the time being (b).
- (f) Where the document is an entry in a banker's book, provable according to the special provisions of the Bankers' Books Evidence Act, 1879 (42 & 43 Vict., c. 11).

Secondary evidence of private documents, how given.

36. Secondary evidence of a private document is usually given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the document, and can give an account of its contents.

Public documents, what deemed to be.

Primary and secondary evidence of public documents.

37. No general definition of public documents is possible, but the rules of evidence applicable to public documents are expressly applied by statute to many classes of documents. Primary evidence of any public document may be given by producing the document from proper custody, and by a witness identifying it as being what it professes to be. Public documents may always be proved by secondary evidence,

(a) e.g., A placard posted on a wall, or a tombstone.

(b) These are practically treated on the same footing as public documents.

but the particular kind of secondary evidence required is in many cases defined by statute. Where a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom is admissible as proof of its contents, if it is proved to be an examined copy or extract, or purports to be signed or certified as a true copy or extract, by the officer to whose custody the original is intrusted (a).

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38. It is provided by many statutes that various certificates, official and public documents, documents and proceedings of corporations and of joint stock and other companies, and certified copies of documents, bye-laws, entries in registers and other books, shall be receivable as evidence of certain particulars in courts of justice, if they are authenticated in the manner prescribed by the statutes. Whenever, by virtue of any such provision, any such certificate or certified copy is receivable as proof of any particular in any court of justice, it is admissible as evidence, if it purports to be authenticated in the manner prescribed by law, without calling any witness to prove any stamp, seal, or signature required for its authentication, or the official character of the person who appears to have signed it (b).

Certified copies.

39. By s. 2 of the Documentary Evidence Act, 1868 (31 & 32 Vict., c. 37), it is provided that *prima facie* evidence of any proclamation, order, or regulation issued by Her Majesty, or by the Privy Council, also of any proclamation, order, or regulation issued by or under the authority of any such department of the Government or officer as is mentioned in the first column of the schedule to the Act (c), may be given in all courts of justice, and in

Provisions of Documentary Evidence Act as to certain documents.

(a) 11 & 12 Vict., c. 99, s. 14.

(b) 8 & 9 Vict., c. 113, preamble, and s. 1, and Steph., Dig. Ev., art. 79. A certificate, &c., so receivable is merely handed in to the Court by the party producing it.

(c) The schedule is as follows:—

| COLUMN I. Name of Department or Officer. | COLUMN II. Names of Certifying Officers. |
|--|---|
| The Commissioners of the Treasury. | Any Commissioner, Secretary, or Assistant Secretary of the Treasury. |
| The Commissioners for executing the office of Lord High Admiral. | Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries to the said Commissioners. |
| Secretaries of State. | Any Secretary or Under Secretary of State. |
| Committee of Privy Council for Trade. | Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant Secretary of the said Committee. |
| The Poor Law Board.* | Any Commissioner of the Poor Law Board, or any Secretary or Assistant Secretary of the said Board. |

* The functions of the Poor Law Board were transferred to the Local Government Board in 1871.

Ch. VI. all legal proceedings whatsoever, in all or any of the following modes :—(1.) By the production of a copy of the *Gazette*, purporting to contain the proclamation, order, or regulation : (2.) By the production of a copy of the proclamation, order, or regulation purporting to be printed by the Government printer (*a*), or, where the question arises in a court in any British colony or possession, of a copy purporting to be printed under the authority of the legislature of that colony or possession : (3.) By the production, in the case of any proclamation, order, or regulation issued by Her Majesty, or by the Privy Council, or by any of the departments specified in the schedule, of a certified copy or extract. Any copy or extract made in pursuance of the Act may be in print or in writing, or partly in print and partly in writing. No proof is required of the handwriting or official position of any person certifying in pursuance of the Act, to the truth of any copy of or extract from any proclamation, order, or regulation.

Special provisions of Army Act as to documents provable by copies.

Rules as to best evidence not applicable to distinction between direct and indirect evidence.

Nature and strength of circumstantial evidence.

40. Special provision is made by the Army Act for proving, by means of copies, attestation papers on enlistment, Queen's Regulations, Royal Warrants, and rules, warrants, and orders made in pursuance of the Act, records in regimental books, and proceedings of courts-martial (*b*).

41. In connection with the rule as to best evidence, reference may be made to the distinction between direct and indirect evidence. By direct evidence is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question. By indirect, or as it is often called, circumstantial evidence, is meant evidence of facts, from which the fact in question may be inferred or presumed. The rule as to best evidence has no application to the difference between direct and indirect evidence. Direct evidence is not better than indirect or circumstantial evidence, the difference between them being one not of *degree* but of *kind*.

42. From the circumstances under which crimes are ordinarily committed, it follows that direct evidence of their commission is rarely obtainable, and that in the great majority of cases reliance must be placed on circumstantial evidence. Such evidence is in no way inferior to direct evidence, and is in some respects superior to it; for it has become a proverb that "facts cannot lie," whilst witnesses may. On the other hand, it must always be

(*a*) By the Documentary Evidence Act, 1882 (45 & 46 Vict., c. 9), this expression is made to include Her Majesty's Stationery Office. The same Act extends the Doc. Evid. Act, 1868, to proclamations, &c., issued by the Lord Lieutenant of Ireland.

(*b*) Army Act, ss. 163, 165.

borne in mind that if facts cannot "lie," they may, and often do, deceive; in other words, that the interpretation which they appear to suggest is not that which ought to be placed upon them. Therefore, before the court finds a prisoner guilty on circumstantial evidence, it must be satisfied, to use the expression of a late learned judge, not only that the circumstances are consistent with the prisoner having committed the act, but that they are inconsistent with any other rational conclusion than that the prisoner was the guilty person (a).

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48. The writer of a series of papers on the value and danger of circumstantial evidence, which appeared some years ago in a legal paper (b), states one of the leading rules with respect to this class of evidence as follows:—
"The facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime,"—and illustrates the rule by contrasting two groups of facts, of which the first would not, whilst the second would, constitute convincing circumstantial evidence of a crime. The characteristic difference between good and bad circumstantial evidence cannot be better explained than by quoting the passage which contains this illustration:—

Illustrations of difference between good and bad circumstantial evidence.

"In one of the works on evidence there is an admirable example of a series of circumstances such as are intended to be excluded by this rule, which we take the liberty of epitomising:—

"1. The accused was a man of bad general character.

"2. He belonged to a nation characteristically regardless of human life.

"3. He narrowly escaped conviction on a charge of murder some years before.

"4. There is a strong ill-feeling between his nation and that of the deceased.

"5. He was heard to make exclamations in his sleep indicating a consciousness of having committed some terrible deed.

"6. The deceased was robbed, and the accused is proved to be notoriously greedy about money.

"It is scarcely necessary to say that, if a series of such circumstances were indefinitely accumulated, it would fail to produce in a sane mind a conviction that the accused was guilty. There is no visible *ligamen* between these facts and the facts sought to be established that the accused committed the murder, as all the facts are perfectly consistent with his innocence. Contrast such circumstances with such as ordinarily present themselves

(a) Baron Alderson in *Hodge's case*, 2 Lewin, C. C., 227.

(b) Law Journal, Oct. 11, 1879,

Ch. VI. "in strong cases of circumstantial evidence. Let us take, —
 "for instance, the following series of facts:—

"1. The deceased was found apparently murdered by a pistol bullet, which penetrated the skull.

"2. On the ground near the body was found a small fragment of a newspaper, which smelled strongly of burnt powder, and led to the supposition that it had been used in separating the powder from the ball: and on the accused being arrested there was found another piece of newspaper, which corresponded minutely at the point where it was torn with that found near the body of the deceased.

"3. In a pond near the scene of the murder was found a pistol, which had evidently been only recently thrown into the water, and into which the bullet fitted.

"4. The pistol was proved to have belonged to a gentleman in the neighbourhood; but it also appeared that the prisoner was a servant in his employment, and that the pistol was missed the day before the murder from among several fowling pieces, pistols, powder flasks, and other articles connected with the paraphernalia of the sportsman, which were arranged in a small room in the gentleman's house devoted to the purposes of sport. It was a part of the prisoner's duty to keep this room and its contents in order.

"5. When asked whether he ever saw the pistol, he denied it.

"On the prisoner were found two bank notes, which were proved to have been given to the deceased in part payment for a horse sold by him to a neighbour.

"The first of these facts at once suggests suspicion against the accused. As the second and subsequent circumstances are disclosed, the suspicion becomes intensified; and, as the narrative goes on, the strong apparent connection between the facts and the crime rapidly culminates, until, even before the last of them is reached, the climax of moral certainty is attained, and the mind is forced to accept the conclusion that the accused was the perpetrator of the crime."

44. The rule which requires production of the best obtainable evidence does not require the strongest possible assurance; in other words, does not require the fullest proof of which the case will admit, nor the repetition of evidence beyond that which is sufficient to establish the fact. For instance, it is not necessary, in order to prove handwriting, to call the writer himself; nor, if a whole regiment should be present at some overt act of mutiny or insubordination, as the striking a commanding officer in front of his regiment, would the law require the production of all the persons present; for if one witness only

Best evidence does not mean strongest possible assurance.

were produced, and if, from his situation at the moment of the occurrence, he had as favourable an opportunity of observing what took place as any person present, his evidence would be complete, and not inferior in kind to any that could be produced.

45. On the same principle the law admits as sufficient the testimony of one credible witness, subject to statutory exceptions in the case of treason and treason-felony; and to the exception that in a trial for perjury one witness alone is not sufficient, without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged, because, otherwise, there is only the oath of one witness against the oath of the person accused. The evidence of a single accomplice is in law sufficient for a conviction, but such evidence must be received with extreme caution, and unless corroborated (see para. 85) should not be accepted as proof of a prisoner's guilt.

Number of witnesses requisite.

46. The rule as to best evidence says that second-best evidence shall not be produced if better evidence can be found. The rule as to hearsay goes a step further, and says that certain classes of second-best evidence shall not be produced under any circumstances. The term "hearsay" is primarily applicable to what a witness has heard another person say with respect to facts in dispute. But it is extended to all statements, whether reduced to writing or not, which are brought before the court, not by the authors of the statement, but by persons to whose knowledge the statements have been brought. The reasons for excluding such statements are, first, that they are not made on oath; and, secondly, that the person to be affected by the statement has no opportunity of cross-examining its author. The rule has been often criticised on the ground that it sometimes excludes the only means of proof obtainable under the circumstances; but its utility in excluding irresponsible proof is obvious (a). It is subject to various limitations or exceptions, the most important of which will be noticed below.

III. Rule as to hearsay.

47. The rule as to hearsay in its narrower sense may be stated as follows:—"No verbal statements with reference to a person charged with an offence, relative to the charge, made in his absence, can be received in evidence against him." The rule, which in this form has been described on high authority (b) as "a rule of the most

Form of rule as to hearsay in narrower sense.

(a) "Hearsay evidence, as a general rule, is not admissible, and it is not admissible because one knows to what extent people will be and are disposed to speak untruly, even without any motive whatever, and one knows what little importance can be attached to any rumour or anything stated as a mere hearsay."—James, L. J., in *Polini v. Gray*, L. R., 12 Ch. Div., at p. 425.

(b) The late Chief Justice Cockburn, in his letter on Bedingfield's case. (Vacher and Sons, 1879.)

Ch. VI. comprehensive and all but inflexible character," is subject to two main exceptions: first, the admissibility of so-called "dying declarations;" and, secondly, the admissibility of statements forming part of what is known by the name of the "*res gestæ*"—that is to say, of the fact, or set of facts, or transaction forming the subject of judicial inquiry.

Statements made in presence of prisoner not excluded.

48. It will be observed that the rule does not exclude evidence as to statements made in the presence of the prisoner (*a*), but it must be recollected that evidence of any such statement, although admissible as showing the conduct of the prisoner when he heard the statement, is not evidence that the statement was true; *e.g.*, evidence that *A.B.* said to the prisoner "you stole *C's* watch" is admissible to show the prisoner's conduct on hearing that accusation, but is not evidence to prove that the prisoner did in fact steal the watch as alleged.

Dying declarations.

49. The first of the two exceptions above referred to is that relating to dying declarations, which are admissible only in trials for murder or manslaughter. In such trials a declaration made by the person killed as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is admissible as evidence, if it is proved that the declarant, at the time of making the declaration, was in actual danger of death, and had given up all hope of recovery. "Dying declarations," said Mr. Justice Byles in a recent case (*b*), "ought to be admitted with scrupulous, I had almost said with superstitious care. They have not necessarily the sanction of an oath; they are made in the absence of the prisoner; the person making them is not subject to cross-examination, and is in no peril of prosecution for perjury. There is also great danger of omissions and of misrepresentations, both by the declarant and the witness. To make a dying declaration admissible, there must be an expectation of impending and almost immediate death from the causes then operating. The authorities show that there must be *no hope whatever*."

Dying declarations, illustrations of rule.

50. The circumstances under which, in trials for murder, statements by the person alleged to have been murdered as to the cause of his death are and are not admissible as evidence against the prisoner, may be illustrated by the following cases:—

(*a*.) At the time of making the statement the deceased had no hope of recovery, though his doctor had,

(*a*) As to confession of an accomplice made in the prisoner's presence, see below, para. 73.

(*b*) *R. v. Jenkins*, L. R. 1 C. C. R., at p. 193, cited with approval by the late Chief Justice Cockburn in his letter on Beddingfield's case.

and he lived ten days after making the statement. The statement was admitted as evidence (a).

(b.) The deceased, at the time of making the statement (which was written down), said something which was taken down thus: "I make the above statement with the fear of death before me, and with no hope of recovery." On the statement being read over, she corrected this to "with no hope at *present* of my recovery." She died thirteen hours afterwards. The statement was not admitted as evidence (b).

(c.) A woman alleged by the prosecutor to have had her throat cut, and so to have been killed by the prisoner, was seen some ten or fifteen minutes before her death, coming from her house, at a distance of from twenty-five to thirty yards from her door, holding her apron to her throat; when, meeting a woman who was coming towards her, she exclaimed "Oh, dear, Aunt! see what Bedingfield" (the prisoner) "has done to me." The judge was not satisfied that the deceased was conscious of the immediate approach of death. The statement was not admitted as evidence (c).

51. Passing to the second of the two exceptions above referred to, the rule is, that where a statement is part of the *res gestæ* or transaction constituting the offence, then, whether it is or is not made in the presence of the prisoner, it is admissible as evidence against him. "Words uttered during the continuance of the main action, whether by the active or the passive party, though they cannot amount to acts for which the accused can be held responsible, yet may so qualify or explain the acts which they accompany, that they become essential for the due appreciation of them. . . . Even where the accused is no longer present, if the words are the immediate and natural effect and consequence of continuing action on his part, though uttered out of his hearing, they may well be considered as part of the transaction" (d).

Statements forming part of *res gestæ*.

52. There is no difficulty in understanding the general principle on which such statements are admitted, but there is sometimes great practical difficulty in determining how long the "transaction" ought to be considered as con-

Statements forming part of *res gestæ*: illustrations of rule.

(a) *R. v. Mosley*, 1 Moo. C. C. 97. This and the next case are cited as illustrations by Stephen, Dig. Ev., art. 26.

(b) *R. v. Jenkins*, L. R. 1 C. C. R. 187.

(c) *R. v. Bedingfield*, as stated by the late Chief Justice Cockburn in his letter on this case. The case is reported in 14 Cox Crim. Ca. 341.

(d) Cockburn, C. J., in his letter on Bedingfield's case, p. 19.

Ch. VI. — tinuing, and what ought to be treated as “the immediate and natural effect of continuing action.” Thus, in *Bedingfield’s* case, as stated above, the deceased woman’s exclamation was not admitted as part of the *res gestæ*, though it would seem that if she had been running away from the prisoner at the time when it was uttered, it would have been admissible. In another case (*a*), which has been the subject of much discussion, the facts appear to have been as follows :—A man is knocked down by a passing cab, and afterwards dies from the injuries thereby occasioned. Just after the accident, the prisoner, the driver of the cab, being then out of sight and out of hearing, a person who had not witnessed what had occurred comes up, and inquires into the matter, and the deceased makes a statement to him. The statement was admitted as evidence, but the propriety of its admission has been much questioned.

Application of rule to trials for rape.

53. In trials for rape, evidence is always allowed to be given as to the fact that, shortly after the commission of the offence, the person against whom the offence was committed made a complaint about it, but not as to the particular terms of the complaint (*b*).

Statements as to bodily or mental feeling admissible.

54. When it is intended to prove the bodily or mental feelings of a person at a particular time, evidence may be given of the usual expression of such feelings made by him at that time (*c*). Thus, in the *Rugeley* poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the prisoner.

Declaration of deceased person against interest.

55. A declaration made by a person since deceased against his pecuniary or proprietary interest is admissible (*d*).

Statements made in course of business by person since deceased.

56. A statement, written or oral, or an entry, which it is the duty of a person to make in the ordinary course of his business or professional employment, is admissible as evidence after his death, provided it is made contemporaneously with the act to which it relates. But it is only admissible to prove those facts which it was the duty of the person making the statement or entry to include in it, and of which he had personal knowledge. Thus, where on a trial for murder it appeared that the deceased, a constable, had, in the course of his duty, made, shortly before his death, a verbal statement to his superior officer as to where he was going, and what he was going to do, it was

(*a*) *R. v. Foster*, 6 C. and P. 325, referred to in the letter on *Bedingfield’s* case, p. 8.

(*b*) *R. v. Osborne*, Car. and Marsh, 622. Letter on *Bedingfield’s* case, p. 21, Stephen, Dig. Ev., art. 8.

(*c*) Stephen, Dig. Ev., art. 11.

(*d*) Stephen, Dig. Ev., art. 28.

held that this statement, which was to the effect that the deceased was going to watch the prisoner, was admissible (a). Ch. VI.

57. It may sometimes happen that a material witness, who has given evidence at the preliminary inquiry, cannot attend at the trial. In proceedings before a civil court for indictable offences, provision is made for such cases by a statute (b) which enacts that the deposition may be read as evidence, on proof that the witness is dead, or so ill as not to be able to travel, that the deposition was taken in the presence of the accused person, that the accused then had a full opportunity of cross-examining the deponent, and further, on *prima facie* evidence that the deposition is signed by the justice by or before whom it purports to be taken. This provision would be applicable where such depositions are required by a court-martial on a trial for an offence under s. 41 of the Army Act. Admissibility of deposition.

58. There is no provision making the summary of evidence taken before a commanding officer, when a prisoner is remanded for trial by court-martial, evidence under the same circumstances as depositions taken before magistrates. Accordingly, the summary cannot be admitted as evidence of the facts recorded by it. But where a statement recorded in the summary of evidence is put in issue before a court-martial, as, for example, where a discrepancy is alleged between the statement made in the summary and the evidence given before a court-martial; or where the alleged wilful falsehood of such a statement becomes the occasion of a trial by a court-martial, the summary, if purporting to give the *verbatim* statement of the witness, may be given in evidence as confirmatory of the statement having been made. Summary of evidence, how far admissible.

59. The rule excluding hearsay evidence is, as has been seen, applicable to written or documentary, as well as to oral evidence. The statement of a person who is not called as a witness is none the less "hearsay" because it has been reduced to writing, and is offered in that form to the court. But in its application to documents of a public or official character, the rule is subject to very important qualifications. In the case of many such documents, the statements which they contain are, either under the general law, or under express statutory provisions, admissible as evidence to the matters to which they relate. Application of hearsay rule to documentary evidence.

60. Thus, by the general law, a statement of any fact of Recitals of public facts

(a) See Stephen, Dig. Ev., art. 27. Under 42 & 43 Vict., c. 11, where an entry is made in an ordinary banker's book in the usual and ordinary course of business, a copy of the entry is evidence of the entry and of the matters therein recorded.

(b) 11 & 12 Vict., c. 42, s. 17. See also Stephen, Dig. Ev., arts. 140, 141, and 30 & 31 Vict., c. 35, s. 6.

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or state-
ments, pro-
clamations,
&c.

Entry in
public
record made
in perform-
ance of
duty.

Special pro-
visions of
Army Act.

IV. Rule as
to opinion.

Exception
in case of
experts.

Medical
experts.

a public nature, if made in any recital in a public Act of Parliament, or in any Royal proclamation, or speech in opening Parliament, or in any address to the crown of either House of Parliament, is admissible as evidence of that fact.

61. So also an entry in any record, official book, or register kept in the British dominions, or at sea, or in a foreign country, made in proper time by any person in the discharge of any duty imposed on him by law, is admissible as evidence of the facts to which it relates.

62. And, under the special provisions of the Army Act, attestation papers, letters, returns, and documents respecting service, army lists, gazettes, warrants, and orders made in pursuance of the Act, records in regimental books, descriptive returns, and certificates of conviction or acquittal, are made evidence of the facts stated by them (a).

63. The general rule is that the opinion or belief of a witness is not evidence. A witness must depose to the particular facts which he has seen, heard, or otherwise observed, and it is for the court to draw the necessary inference from these facts. Thus a witness may not on a trial for desertion characterise the prisoner's absence as "desertion." This is a matter of inference, and is the point which it rests with the court to determine according to the evidence. The examination of the witness should be confined to the fact of the prisoner's absenting himself, and to such other facts relevant to the charge as may be within the *knowledge* of the witness.

64. The chief exception to this rule relates to the evidence of experts. The opinion of an expert, that is to say, a person specially skilled in any science or art, is admissible as evidence on any point within the range of his special knowledge.

65. Thus, in a poisoning case, a doctor may be asked as an expert whether, in his opinion, a particular poison produces particular symptoms. And, where lunacy is set up

(a) See Army Act, ss. 163-165. Note the distinction between the provision making the copy evidence of the original, as an exception from the rule as to best evidence (e.g., s. 163 (1) (c), as to copies of the Queen's Regulations, Royal Warrants, &c.), and the provisions which make the document, as an exception from the rule as to hearsay, evidence of the facts to which it relates; also the distinction between a document being evidence of certain facts and (as a letter or record) evidence of the statement of those facts by some person.

The statements in the text, particularly in para. 59, as to the admission of documents, do not exclude the admission in evidence of documents which are part of the *res gesta*. If, e.g., a prisoner is charged with embezzlement, the books which it was his duty to keep are admissible in evidence as part of the transaction under investigation, and the entries made by him or under his authority in those books will be evidence against him, as part of his conduct in relation to such transaction, and as raising presumptions which he must explain.

as a defence, an expert may be asked whether, in his opinion, the symptoms exhibited by the alleged lunatic commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of their acts, or of knowing that what they do is either wrong or contrary to law. But in neither of those cases could the expert be asked whether the particular symptoms in fact existed in the particular case (a).

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66. An officer may be asked, as an expert, to give his opinion on a point within his special military knowledge, but, to make his opinion admissible, his knowledge must be of a kind not possessed by the court generally. Thus, in a trial before a court-martial, it is not proper to ask a witness for an opinion depending on military science generally, though it may be perfectly proper to put questions involving opinion to an engineer as to the progress of an attack, or to an artillery officer as to the probable effect of his arm, if directed as assumed; since these matters, though having reference to military science, are not of such a nature as to be presumably known to each member of a court-martial.

Experts in military science.

67. With respect to handwriting, it has been specially provided by statute (b) that comparison of a disputed handwriting with any writing, proved to the satisfaction of the court to be genuine, is permitted to be made by witnesses, and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute. It must, however, be borne in mind that writing made for the special purpose of comparison is not unlikely to be disguised. The comparison may be made either by a person acquainted with the handwriting, or by an expert in handwriting, or by the court itself. A witness may be required to read writing or to write in the presence of the court.

Experts in hand-writing.

68. The rule which requires a witness to state what he knows, and not what he thinks, does not require him to depose to facts with an expression of certainty that excludes all doubt in his mind. For example, it is the constant practice to receive in evidence a witness's belief of the identity of a person or thing, or of the fact of a certain handwriting being the handwriting of a particular person, though he will not swear positively to those facts. It has been decided that a witness who falsely swears that he "thinks" or "believes," may be convicted of perjury

Rule excluding opinion does not exclude evidence as to belief.

(a) See Stephen, Dig. Ev., art. 49, and cases there cited as illustrations.

(b) 28 & 29 Vict., c. 18, s. 8.

Ch. VI. equally with the man who swears positively to that which he knows to be untrue.

pinion as
to conduct,
how far
admissible.

69. In cases affecting the conduct of the accused, either as to deportment or language, it is not only proper, but often necessary to require a witness to declare his opinion, because that opinion may be derived from the impression of a combination of circumstances, occurring at the time referred to, difficult, if not impossible, fully to impart to the court. But it would be manifestly improper to draw the attention of a witness to facts, whether derived from his own testimony or from that of another witness, and to ask his opinion as to their accordance with military discipline or usage, because the court, being in possession of facts, are the only proper judges of their tendency. If the witness is asked a question the tendency of which is to make him express his opinion as to the general conduct of the person accused, or give his judgment on the whole matter of the charge, he may, and should, decline to answer it.

Refreshing
memory.

70. A witness may not read his evidence or refer to notes of evidence already given him, but he may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court consider it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct. Any writing so referred to must be produced and shown to the adverse party, if he requires it, and that party may, if he pleases, cross examine the witness upon it.

Notes re-
ferred to
not evi-
dence of
themselves.

71. But a witness who refreshes his memory by reference to a writing, must always swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the memorandum or entry at the time it was written. If, on referring to a memorandum not made by himself, he can neither recollect the fact nor recall his conviction as to the truth of the account or writing when the facts were fresh in his memory, so that he cannot speak as to the fact further than as finding it noted in a written entry, his testimony is objectionable, as hearsay.

(v.) *Admissions and Confessions.*

Admissions
not
evidences.

72. In criminal proceedings, admissions by a prisoner of matters relating to an alleged offence as distinguished from actual confession of the offence itself, are, strictly speaking, not receivable as evidence (a). It is, however,

(a) This does not extend to acts done or things said by the prisoner

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the practice of courts-martial to receive admissions made in open court as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute, but must be proved on the part either of the prosecution or of the defence. Thus, it is the practice to allow either party the option of admitting the authenticity of orders or letters, or the signature of a document, or the truth of a copy, put in by the other party, in cases where such writings are receivable when proved; or that certain details in an enumeration of stores, or in an account, are correctly stated: or that a promise or permission to a certain effect, or to a certain order, was actually given, or that a certain letter was sent or received on a given day; and so in similar cases where admissions may expedite the proceedings and do not go to the merits of the matter before the court.

73. The general rule is, that a confession is not admissible as evidence against any person except the person who makes it (a). But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it implicates him, his silence under the charge may be used against him, whilst on the other hand his prompt repudiation of the charge might tell in his favour.

Confession admissible only against person who makes it.

74. To be admissible as evidence, a confession must be voluntary. The prosecutor should always prove the circumstances under which it was made.

Confession must be voluntary.

75. A confession is not deemed to be voluntary, if it appears to the court to have been caused by any inducement, threat, or promise proceeding from a magistrate or other person in authority or concerned in the charge, and having reference to the charge against the accused person, whether addressed to him directly or brought to his knowledge indirectly, and if, in the opinion of the court, the inducement, threat, or promise gave the accused person reasonable grounds for supposing that by making a confession he would gain some advantage or avoid some evil in reference to the proceedings against him. Thus, on a trial of A for murdering B, a handbill issued by the Secretary of State, promising a reward and pardon to any accomplice who would confess, was brought to the know-

Confession when not deemed voluntary.

as part of the *res gestæ*, which, until explained by him, raise a presumption of guilt; as, for instance, if he has charged himself in a book of account which it was his duty to keep with a sum of money, the book may be an admission that he received the money, and on proof that he made the entry, is admissible in evidence against him. A letter by a person charged with an offence apologizing for the offence would ordinarily be a confession, but a letter admitting some of the facts alleged, but explaining them so as to show that there was no criminality in them, would ordinarily not amount to a confession.

(a) Stephen, Dig. Ev., art. 21. As to when the statement of one mutineer or conspirator is admissible against another, see above, para. 26, *et seq.*

Ch. VI. ledge of A, who, under the influence of a hope of pardon, made a confession. It was held that the confession was not voluntary (a).

Confession
when
deemed
voluntary.

76. But a confession is not involuntary merely because it appears to have been caused by the exhortations of a person in authority to make it as a matter of religious duty, or by an inducement collateral to the proceedings, or by inducements held out by a person having nothing to do with the apprehension, prosecution, or examination of the prisoner. Thus, A being charged with the murder of B, the chaplain of the gaol read the Communion Service to A, and exhorted him on religious grounds to confess his sins. A in consequence made a confession, and it was held that this confession was voluntary (b). So, again, a confession made by a prisoner to a gaoler in consequence of a promise by the gaoler that if the prisoner confessed he should be allowed to see his wife, would be admissible in evidence. In short, to make a confession involuntary, the inducement must have reference to the prisoner's escape from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge.

Confession
made after
removal of
impression
produced by
threat, &c.,
deemed
voluntary.

77. A confession is deemed to be voluntary if, in the opinion of the court, it is shown to have been made after the complete removal of the impression produced by any inducement, threat, or promise which would otherwise render it involuntary. Thus, A is accused of the murder of B, C, a magistrate, tries to induce A to confess by promising to try to get him a pardon if he does so. The Secretary of State informs C that no pardon can be granted, and this is communicated to A. After this A makes a statement. This is a voluntary confession (c).

Facts
discovered
through
involuntary
confession
admissible.

78. Facts discovered in consequence of a confession improperly obtained, and so much of the confession as distinctly relates to those facts, may be proved. Thus, A, accused of burglary, makes a confession to a policeman under an inducement which prevents it from being voluntary. Part of it is that A had thrown a lantern into a certain pond; the fact that he said so, and that the lantern was found in the pond in consequence, may be proved (d).

Confession
made under
promise of
secrecy, &c.

79. If a confession is otherwise admissible as evidence, it does not become inadmissible merely because it was made under a promise of secrecy, or in consequence of a

(a) *R. v. Boswell*, Car. and Marsh, 584, cited as an illustration by Stephen, Dig. Ev., art. 22.

(b) *R. v. Clewes*, 4 C. and P., 221, cited by Stephen, Dig. Ev.

(c) Stephen, Dig. Ev., art. 22, *R. v. Clewes*, 4 C. and P., 221.

(d) Stephen, Dig. Ev., art. 22, *R. v. Gould*, 9 C. and P., 364.

deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions, whether put by a magistrate, officer, or private person, or because he was not warned that he was not bound to make the confession, and that evidence of it might be given against him. Ch. VI.

80. If a confession is given in evidence, the whole of it must be given, and not merely the parts disadvantageous to the accused person. Whole of confession must be given.

81. Evidence amounting to a confession may be used as such against the person who gives it, though it was given on oath and though the proceeding in which it was given had reference to the same subject-matter as the proceeding in which it is to be used, and though the witness might have refused to answer the questions put to him; but if, after refusing to answer such questions, the witness is improperly compelled to answer, his answers are not a voluntary confession (a). Thus A was charged with maliciously wounding B. Before the magistrates, A had appeared as a witness for C, who was charged with the same offence. A's deposition was allowed to be used against him on his own trial (b). The same rule would appear to apply to statements made by a prisoner before his commanding officer; but the proceedings of a court of inquiry, or any confession or statement made at a court of inquiry, cannot be used as evidence against an officer or soldier before a court-martial (c). Confession made on oath or in previous proceedings.

(vi.) Who may give Evidence.

82. Under the general law a person charged with an offence is not competent to give evidence on his own behalf, but exceptions have been made to this rule by recent legislation, especially in cases where the burden of proof is thrown on the person charged. In such cases he is declared to be a competent but not a compellable witness (d). Person charged not competent witness.

83. As a general rule every person, other than the person charged, is a competent witness. Formerly persons were disqualified by crime or interest, or by being parties to the proceedings, but these disqualifications have now been removed by statute (e), and the circumstances which formerly created them do not affect the competency, though they may often affect the credibility, of a witness. All other persons competent witnesses.

(a) Stephen, *Dig. Ev.*, art. 23.

(b) *R. v. Chidley and Cummins*, 8 Cox, *Crim. Ca.*, 365.

(c) Rule 123 (H).

(d) See, e.g., s. 156 (3) of the Army Act, and 39 & 40 Vict., c. 20, s. 4 (sending unseaworthy ship to sea), 46 Vict., c. 3, s. 4 (explosive substance), 48 & 49 Vict., c. 69, s. 20 (offences against girls, &c.).

(e) Lord Denman's Act, 6 & 7 Vict., c. 86; Lord Brougham's Act, 14 & 15 Vict., c. 99.

Ch. VI. **84.** The chief exceptions to the general rule as to the competency of witnesses, are :—

Exceptions
to com-
petency of
witnesses.

First. That, subject to certain qualifications, husband and wife are not competent to give evidence for or against each other : and

Secondly. That persons jointly arraigned and being tried together, are not competent to give evidence for or against each other (*a*).

If, therefore, it is thought desirable to use against one prisoner the evidence of another who is being tried with him, the latter should be released, or a separate verdict of not guilty taken against him. A prisoner so giving evidence is popularly said to turn Queen's evidence. If a prisoner thinks that the evidence of one or more of the other prisoners proposed to be conjointly arraigned with him will be material to his defence, he should claim a separate trial (*b*).

Evidence
of ac-
complices.

85. It follows from what has been stated that the evidence of an accomplice is admissible against his principal, and *vice versa*, unless principal and accomplice are being tried together. But the evidence of an accomplice should always be received with great jealousy and caution. A conviction on the unsupported testimony of an accomplice may, in some cases, be strictly legal, but it is the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to his identification of the person or persons against whom his evidence may be received.

Reciprocal
incompe-
tency of
husband
and wife.

86. The incompetency of husband and wife to give evidence against each other does not apply where the trial is for violence inflicted by the husband on the wife, or *vice versa*, or where the husband or wife prosecutes the other for some offence relating to property (*c*). But in other cases it extends to prevent them from giving evidence which may tend to criminate each other collaterally, or from which one of them may derive a direct benefit at his or her trial. Thus, where two prisoners were being tried for burglary, and both were identified by a single witness for the prosecution, and each set up a distinct alibi, the wife of one was not allowed to give evidence in support of the alibi of the other, because her testimony went to shake the credit of the witness for the prosecution. The rule of exclusion extends only to a lawful wife. By s. 156 (3) of the Army Act an exception is made to the

(a) See 14 & 15 Vict., c. 99, s. 3; 16 & 17 Vict., c. 83, s. 2; Stephen, Dig. Ev., art. 103; *R. v. Payne*, 1 O. C. R., 349.

(b) See Rule 15.

(c) Under Married Women's Property Act, 45 & 46 Vict., c. 75, ss. 12, 18.

rule in the case of offences against that section, and there are similar exceptions under other enactments (a). There is no ground for supposing that the wife of a prosecutor is an incompetent witness.

Ch. VI.

87. A witness is incompetent if, in the opinion of the court, he is prevented by extreme youth (b), disease affecting his mind, or any other cause of the same kind, from recollecting the matter on which he is to testify, from understanding the questions put to him, from giving rational answers to those questions, or from knowing that he ought to speak the truth.

Incompetency from
idiocy, &c.

88. A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible, but such writing must be written and such signs made in open court. Evidence so given is deemed to be oral evidence.

Deaf and
dumb persons
not incompetent.

89. The particular form of the religious belief of a witness, or his want of religious belief, does not affect his competency. If he takes an oath he may take it with such ceremonies and in such manner as makes it binding on his conscience (c). If he objects to take an oath on the ground that he has no religious belief, or that taking an oath is contrary to his religious belief, he may make a solemn affirmation (d).

Religious
belief
immaterial
as to competency.

90. A member of a court-martial is a competent witness in favour of a prisoner, and might, as such, be sworn to give evidence at any stage of the proceedings; but the Army Act and Rules of Procedure direct that a witness for the prosecution shall not sit on a court-martial for the trial of any prisoner against whom he is witness (e). A member of the court must not communicate privately to other members of the court any special knowledge which he has, or thinks that he has, of the prisoner's guilt or innocence, or act on private grounds of belief. If he wishes to give evidence, he must be sworn as other witnesses and be subject to cross-examination.

Competency of
member of
court to
give
evidence.

91. It will be seen that the effect of the successive enactments which have gradually removed the disqualifications attaching to various classes of witnesses has been to draw a distinction between the *competency* of a witness and his *credibility*. No person is disqualified on moral or religious grounds, but his character may be such as to

Distinction
between
competency
and
credibility.

(a) See, e.g., 46 Vict. c. 3, s. 4, and 48 and 49 Vict., c. 69, s. 20.

(b) By the Criminal Law Amendment Act, 1885 (48 & 49 Vict., c. 69, s. 4) special provision is made for the reception of the unsworn evidence of a child in the case of certain offences against girls.

(c) Rules 30, 81 (C); and see 1 & 2 Vict., c. 105.

(d) 51 & 52 Vict., c. 46; Army Act, s. 52 (4), Rule 81 (D).

(e) Army Act, s. 50 (3), Rule 105 (D).

Ch. VI. throw grave doubts on the value of his evidence. No relationship, except that of husband and wife, excludes from giving evidence. The parent may be examined on the trial of the child, the child on that of the parent, master for or against servant, and servant for or against master. The relationship of the witness to the prosecutor or the prisoner in such cases may affect the credibility of the witness, but does not exclude his evidence.

(vii.) *Privilege of Witnesses.*

Person competent not always compellable to give evidence.

92. It by no means follows that, because a person is competent to give evidence, he is therefore compellable to do so. There are many cases in which a witness before a civil court may decline to answer a question or produce a document, and the like privileges are expressly extended by statute to witnesses before courts-martial (a).

Witness not to be compelled to criminate himself.

93. No one is bound to answer a question if the answer would, in the opinion of the court, have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge, penalty, or forfeiture, which the court regards as reasonably likely to be preferred or sued for, or to any military punishment. Accordingly, an accomplice cannot be examined without his consent, but if an accomplice who has come forward to give evidence on a promise of pardon, or favourable consideration, refuses to give full and fair information, he renders himself liable to be convicted on his own confession. However, even accomplices in such circumstances are not required to answer, on their cross-examination, as to other offences.

Privilege does not extend to answers showing civil liability.

94. The privilege as to criminating answers does not cover answers merely tending to establish a civil liability. No one is excused from answering a question or producing a document only because the answer or document may establish or tend to establish that he owes a debt, or is otherwise liable to any civil suit, either at the instance of the crown or of any other person (b).

When privilege may be waived by witness.

95. The privilege of not answering for the above reasons is the privilege of the witness, and therefore he may waive it, and if he chooses to answer, his answer must be received in evidence, but the privilege mentioned in the following paragraphs is for the protection of other parties and cannot be waived except with their consent.

Evidence as to affairs of State.

96. Another class of privilege is based on considerations of public policy. No one can be compelled to give evidence relating to any affairs of State, or as to official communications between public officers upon public affairs,

(a) See Army Act, s. 128, and Rule 73 (B).

(b) 46 Geo. III, c. 37.

except with the permission of the officer at the head of the department concerned. Ch. VI.

97. On this principle; a confidential report, or letter, or official information of a confidential character, although it may refer to matters which a court-martial may have decided to be relevant to the inquiry before it, cannot be produced or disclosed except by consent of the superior authority; and this consent is refused if the production or disclosure is considered detrimental to the public service. Proof of the refusal should be laid before the court by the examination of a witness, or by a written communication, read in open court, and attached to the proceedings. Privilege as to confidential reports and information.

98. So also, the proceedings of a court of inquiry cannot be called for by courts-martial, nor witnesses examined as to their contents; nor is any confession or statement made at a court of inquiry admissible against an officer or soldier before a court-martial (a). Privilege as to proceedings of court of inquiry.

99. Again, in cases in which the Government is immediately concerned, no witness can be compelled to answer any question the answer to which would tend to discover the names of persons by or to whom information was given as to the commission of offences. It is, as a rule, for the court to decide whether the permission of any such question would or would not, under the circumstances of the particular case, be injurious to the administration of justice. Information as to commission of offences.

100. A husband is not compellable to disclose any communication made to him by his wife during the marriage; and a wife is not compellable to disclose any communication made to her by her husband during the marriage (b). Communications during marriage.

101. A legal adviser is not permitted, whether during or after the termination of his employment as such, unless with his client's express consent, to disclose any communication, oral or documentary, made to him as such legal adviser, by or on behalf of his client, during, in the course of, and for the purpose of his employment, or to disclose any advice given by him to his client during, in the course of, and for the purpose of such employment. But this protection does not extend to:— Professional communications.

1. Any such communication if made in furtherance of any criminal purpose;
2. Any fact observed by a legal adviser in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether his attention was directed to such fact by or on behalf of his client or not; or

(a) See also para. 81 above, and Rule 123 (H).

(b) 16 & 17 Vict., c. 83, s. 2.

- Ch. VI.** 3. Any fact with which the legal adviser became acquainted otherwise than in his character as such.

The expression "legal adviser" includes barristers and solicitors, their clerks, and interpreters between them and their clients, and the person assisting a prisoner during trial before a court-martial.

Doctors and clergymen not privileged. 102. Medical men and clergymen are not privileged from the disclosure of communications made to them in professional confidence, but it is not usual to press for the disclosures of communications made to clergymen.

Questions to be entered on proceedings whether answered or not. 103. The questions, whether answered or not, should be entered on the proceedings. When the witness claims the privilege of not answering, it is for the court to decide whether the question is within any of the exceptions. Courts-martial may also in their discretion interpose by informing a witness, at the time when a question is put to him, that he is not bound to answer. Any such interposition, and any claim of privilege by the witness, and the fact whether the witness is required to answer or not, should be noted on the proceedings.

(viii.) *How evidence is to be given.*

Mode of giving evidence dealt with by Rules. 104. The mode in which evidence is to be given before courts-martial is fully dealt with in the Rules of Procedure, to which the following paragraphs must be taken as supplemental.

Points requiring attention of court. 105. It will be the duty of the court in every case to see that the rules of evidence are strictly conformed to. The following points will require special attention in relation to any evidence that may be tendered :—

- (a) That it is relevant to the issue.
- (b) That it is the best evidence procurable.
- (c) That it is not within the rule rejecting hearsay evidence.
- (d) That (except in the case of experts) it is not a mere expression of opinion.
- (e) That if it is a confession or admission, it is legally admissible.
- (f) That if it is a document, it is legally admissible and properly put in evidence (a).
- (g) That no document or other thing is used for the purposes of the trial which has not been properly put in (b).

(a) A document is said to be "put in" when it is produced to the court, and unless verification by a witness is necessary (para. 38), properly verified.

(b) This must, however, be taken subject to the qualification that for purposes of identification, &c., any document or thing may be shown to

- (h) That any witnesses called are legally competent to give evidence. Ch. VI.
- (i) That any document with which a witness proposes to refresh his memory is legally admissible for the purpose.
- (k) That the examination of witnesses is fairly and properly conducted.

106. This last point requires a little more detailed notice. The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief; and on this examination the question must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must, of course, in all cases, see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege; and he must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him. Examination of witnesses.

107. Accordingly a witness must not be asked in examination-in-chief leading questions on any material point, that is to say, questions suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, "Did the prisoner then go into the barrack-room?" but "What did the prisoner do next?" If it were not for this rule a favourable and dishonest witness might be made to give any evidence that is desired. On the other hand it would be mere waste of time to enforce the rule where the questions asked are simply introductory, and form no part of the real substance of the inquiry, or where they relate to matters which, though material, are not disputed. But where a question relates to a contested point, which is either directly conclusive of the matter in issue, or directly and proximately connected with it, the rule should nearly always be strictly enforced, and no question should be allowed in a form which directly or indirectly suggests to the witness the answer desired, or which, embodying a material fact, admits of a conclusive answer by a simple "Yes" or "No." Leading questions.

108. Care must, however, be taken in enforcing this rule, not to exclude questions which do not really suggest an answer, but merely direct the attention of the witness to the subject as to which he is questioned. It is often, indeed, extremely difficult in practice to determine whether or not a question is in a leading form, and in all such cases Test of what are leading questions.

a witness before it has been formally proved and put in. See below para. 110.

Ch. VI. the real test should be whether or not the examination is being conducted fairly and with the object of eliciting the honest belief of the witness.

—
Examples of
fair and
unfair
questions.

109. The following may be taken as examples of fair and unfair examination of a witness. Suppose a man to be charged with the murder of another by stabbing, the body having been found at the upper end of a certain street, and a witness to be called to speak to the circumstances under which the blow was struck. There would be no objection to ask the witness—

If he remembered the 12th August, and—

If he was in North Street about noon on that day.

These questions, though in a leading form, are merely introductory, and if the prisoner's defence was that he had struck the blow, but that he had done it in self defence, there would be no objection to going a little further and asking—

Whether he saw the deceased and the prisoner there ?

But from this point all leading questions should be avoided, and the examination should be continued in some such form as this :

In what part of the street were the prisoner and deceased when you first saw them ?

Were you in a position to see and hear what passed between them ?

Tell us in your own words exactly what passed.

To ask, instead of the first question,

Were they at the upper end of the street when you first saw them ?

would be highly improper, as it might be very important in considering whether or not there had been a long quarrel or scuffle, to know whether they had moved far from the place where the witness first saw them, to the place where the body was found. It would obviously be still more improper to ask,

Did you see the prisoner go up stealthily behind the deceased and strike him a blow with a knife ?

or any question of that character.

If, on the other hand, the defence set up were an *alibi*, it would be improper to ask directly after the introductory questions—

Whether the witness saw the deceased and the prisoner there ?

The questions in that event should rather be :

Whether he saw anyone there ?

Whether he could identify them ?

Whether he can identify anyone in court as having been present ?

though, finally, if an answer could not be got in any other way, the attention of the witness might be called to the prisoner, and he might be distinctly asked,

"Whether he saw that person there?"

But this should not be done until the witness had said that he saw some persons there, and that he would know them again.

110. The rule in these cases is, that the attention of a witness who has alluded to any person or thing, may be called to a particular person or thing for the purpose of identification, and that the witness may be asked directly whether that is the person or thing to which he alluded; but in practice this should only be done after examination in the ordinary way has failed to elicit any distinct replies. When any article, such as a stick, belt, or document, is produced in court for the purpose of identification, the witness may be asked such questions as "Whether he recognises it," and "Whether he saw anything done with it, or to it;" but such a question as "Whether he saw A strike B with the stick or belt," or "Whether he saw A make an alteration in the document," should not be admitted. If, however, the interests of justice plainly require it, the court may allow this general rule to be relaxed; as, for example, in the case of a child, whose attention cannot otherwise be directed to the matter under investigation. Again, where a witness is evidently labouring under a want of recollection, the court may in their discretion according to the circumstances, allow him to be assisted by the suggestion, for instance, of a name, or of the contents of a lost document.

Ch. VI.

Rule as to directing attention to particular persons and things.

111. Of course, if a person calls a witness and the witness appears to be directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side, except that as he had been put forward as worthy of credit, by the person calling him, that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character (a).

Exceptions in case of hostile witness.

112. When the examination-in-chief is finished the opposite party cross-examines the witness. In cross-examination leading questions and irrelevant questions may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power; and irrelevant questions are often put in cross-

Rules as to cross-examination.

Ch. VI. examination for the sole purpose of putting a witness who is supposed to have learnt up the story, off his guard. Questions also may be put on cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit, impeaching his motives or injuring his character; though such questions cannot be put on the examination-in-chief or re-examination.

Further observations on cross-examination.

113. Nevertheless, questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. Nor, though irrelevant questions may be asked, should a witness be pressed in cross-examination as to any facts, which, if admitted, would not affect the matter at issue or the credit of the witness. And if the person cross-examining intends to adduce evidence contradicting the evidence given by the witness, he should be required to put to the witness in cross-examination the substance of the evidence which he proposes to adduce, in order to give him an opportunity of retracting or explaining.

Further observations on cross-examination.

114. When a witness is under cross-examination he may be asked any questions which tend to test his accuracy, veracity or credibility, or (except in the case of a witness originally called by the person cross-examining him) to shake his credit by injuring his character. But a witness may of course decline to answer a question as to which he is entitled to claim privilege, and the right of asking questions tending merely to discredit, a right which has sometimes been seriously abused in civil courts, is qualified in the case of trials before courts-martial by Rule 91 of the Rules of Procedure.

Exclusion of evidence to contradict answers as to questions testing veracity.

115. Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character; except in two cases:—

- (i.) Where the witness is asked whether he has ever been convicted of any felony or misdemeanor and denies or refuses to answer (a); and,
- (ii.) Where he is asked a question tending to show that he is not impartial.

In these two cases proof may be given of the truth of the facts suggested; in other cases the person cross-examining cannot call evidence to rebut the witness's answer.

Cross-examination as to previous statements.

116. A witness may be asked whether he has, on a previous occasion, made a statement relative to the issue and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not admit that he made such a statement, proof may be given that

he did in fact make it. The summary of evidence may be used to prove any statement which the witness made, and which it is proposed to contradict. Such a question may be put, even though the statement may have been in writing (notwithstanding the rules as to documentary evidence), and even without the writing being shown to him or proved in the first instance; though it should be shown to him afterwards, and his attention called to those parts of the writing which are to be used to contradict him, as otherwise the contradictory proof cannot be given (a).

117. The credit of any witness may be impeached by the adverse party by the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on his oath. Such persons may not, on their examination-in-chief, give reasons for their belief, but they may be asked their reasons in cross-examination, and their answers cannot be contradicted. When the credit of a witness is so impeached, the party who called the witness may give evidence in reply to show that the witness is worthy of credit.

Impeaching
credit of
witnesses.

118. At the conclusion of the cross-examination the person who called the witness may, if he pleases, re-examine him; but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the other side may further cross-examine upon it.

Rule as
to re-ex-
amination.

119. Speaking generally, the above rules should only be enforced in their full strictness in the case of counsel or skilled advocates, or other persons who may be supposed to be thoroughly acquainted with the rules of evidence, and therefore may be presumed only to break the rules of evidence for the sake of obtaining an improper advantage. In other cases the court may allow considerable latitude, and should interfere only where the interests of justice plainly require it.

Discretion
of court as
to enforcing
rules.

(a) 28 & 29 Vict., c. 18, ss. 3, 4.

CHAPTER VII.

OFFENCES PUNISHABLE BY ORDINARY LAW.

Explana-
tion of s. 41
of the
Army Act.

1. By s. 41 of the Army Act, offences punishable by the law of England are to be deemed offences against military law if committed by any person who is subject to military law in any part of the world. Any such offences may be tried by court-martial, whether committed in England or elsewhere: with this exception, that if the offence be treason, treason-felony, murder, manslaughter, or rape, it cannot be tried by court-martial if it is committed—

In the United Kingdom, or

In any place in Her Majesty's dominions (other than Gibraltar) which is less than 100 miles in a straight line from some city or town where it might be tried by a competent civil court, unless the offender is on active service.

At the same time the fact that such offences are triable by court-martial will not oust the jurisdiction of ordinary civil courts over them (a).

Punish-
ment of
offences
mentioned
in s. 41.

2. With regard to the punishment of these offences, if tried by court-martial, treason and murder are punishable with death; and treason-felony, manslaughter, and rape are punishable with penal servitude for life; but, except in the case of murder, for which there is no alternative punishment, the above punishment may be in all cases modified to such less punishments as are mentioned in the Act (b). All other offences of this kind may be either punished as such offences would be punishable by a civil court in England; or they may be treated as military offences, and punished, if committed by an officer, by cashiering, or if committed by any other person subject to military law, by two years' imprisonment with hard labour, or such less punishment as are mentioned in the Act.

Object of
chapter.

3. Inasmuch, therefore, as courts-martial may frequently be called on to administer the ordinary criminal law of England, it is proposed in the present chapter to give a

(a) Section 162.

(b) Section 44.

brief outline of the main features of that law, without entering into minute details. Ch. VII.

To those who wish for a more detailed knowledge of this branch of the law, the following authorities are recommended :—

Russell on Crimes and Misdemeanors.

Archbold's Pleadings and Evidence in Criminal Cases.

Roscoe's Digest of the Law of Evidence in Criminal Cases.

Stephen's Digest of the Criminal Law.

Stephen's General View of the Criminal Law ; and the Report of the Criminal Code Bill Commission, 1879.

It has not been thought necessary to give special references to all the different text books, or to the cases on the authority of which the various propositions of law are laid down in this chapter ; but it may be mentioned that the Digest of Mr. Justice Stephen has been largely borrowed from in the following pages, and will be found of invaluable assistance to the student, from the clear manner in which the principles of the law are there defined.

4. The chapter is arranged under five headings :—

Arrangement of chapter.

- (i.) *Preliminary.*
- (ii.) *Offences against the Person and Reputation.*
- (iii.) *Offences against Rights of Property.*
- (iv.) *Offences against Administration of Justice.*
- (v.) *Offences against Public Order.*

(i.) *Preliminary.*

5. The general procedure in relation to cases of the character dealt with in this chapter is regulated by the Army Act (s. 41), and the Rules of Procedure, to which reference must be made ; any special points in connection with the procedure in relation to any particular offence will be noticed hereafter, when the offences are dealt with in detail. Procedure.

The following punishments may be awarded by the ordinary law :— I. PUNISHMENTS.

Death.
Penal servitude
Imprisonment.
Flogging.
Whipping.
Fine.

Punishments awardable.

6. Death must (except where otherwise specified) be inflicted by hanging by the neck. In some cases the law provides that sentence of death may be recorded instead of being pronounced. The meaning of this is that the court Death.

Ch. VII. — may, in their discretion, order the sentence to be recorded by the officer of the court, instead of pronouncing it ; and it will then have effect as though it had been actually pronounced, but the prisoner had been reprieved : *i.e.*, the execution of the sentence must be suspended until Her Majesty's pleasure with respect to the prisoner is known.

Penal
servitude.

7. Wherever it is stated in this chapter that a sentence of penal servitude can be passed for a period of years, this must be understood as being the maximum punishment that can be given ; but (unless otherwise specified) the court may, in their discretion, sentence the offender to penal servitude for any less period (not being less than three years), or to imprisonment for any period not exceeding two years with or without hard labour.

Imprison-
ment.

8. Wherever it is stated that a sentence of imprisonment can be passed for any period, this again must be understood as being the maximum punishment (α) ; but (unless otherwise specified) the court may, in their discretion, sentence the offender to imprisonment for any less period, and may direct the imprisonment to be with or without hard labour. In a few cases the prisoner may be sentenced to solitary confinement during part of his imprisonment, but this punishment is now very sparingly used, and should never be imposed by a military court.

Flogging.

9. The punishment of flogging is awardable for certain offences, chiefly assaults involving personal violence. A sentence of flogging must specify the instrument to be used, and the number of strokes (not exceeding fifty at any one flogging) to be inflicted ; and every such flogging must be inflicted within six months from the passing of the sentence, and before the removal of the prisoner (if sentenced to penal servitude in addition) to a convict prison.

Whipping.

10. Boys under sixteen may be sentenced to whipping for a good many offences, but it appears unnecessary to specify them in this chapter.

Fine.

11. When a fine is imposed, it must be ordered to be paid to Her Majesty ; if no maximum is limited, the amount is in the discretion of the court, but must not be excessive.

Recogni-
zances,
police
supervision,
&c.

12. In addition to the above punishments an offender may, in some cases, be required to enter into recognizances to be of good behaviour, or may be ordered to be under police supervision for a certain time, or may be sent to a reformatory, but it is unnecessary for the present purpose to consider the law on these subjects.

Cumulative
punish-
ments.

13. If an offender is convicted of more offences than one, he may be sentenced to a separate punishment for each offence, and the court may, in its discretion, direct that

(α) In some cases the legal maximum period of imprisonment exceeds two years ; but practically the ordinary maximum of two years should in no case be exceeded.

one term of confinement shall not begin until another has been undergone, or that the terms shall be concurrent. **Ch. VII.**

14. The infliction of punishment is, in many cases, by no means the only result which follows on conviction for an offence. Such a conviction may involve other important consequences, varying according to the quality of the offence, the nature of the punishment to which the offender is sentenced, and similar considerations. Of these considerations the most important is the quality of the offence, *i.e.*, whether the offence is treason, felony, or misdemeanor. **Consequences of conviction.**

15. Every conviction for *treason* or *felony* involves the consequence, that the offender may be ordered to pay the whole or any part of the costs of the prosecution, and to pay any sum not exceeding £100 by way of compensation to any person who has suffered loss of property through his offence. **For treason or felony.**

16. Such a conviction may also involve further consequences, if the offender is sentenced to certain specified punishments. **In case of sentences to certain punishments.**

Thus if the offender is sentenced to—

Death,
Penal servitude,
Imprisonment with hard labour for any period, or
Imprisonment without hard labour for more than one year,

he will forfeit any public office, and any pension or superannuation allowance payable out of any public funds, which he may then hold or be entitled to, unless he receives a free pardon within a limited time; he will also become incapable of holding any public office or employment in the future, until he receives a free pardon or has suffered his punishment, and been discharged from custody; and he will incur various other civil disabilities.

17. Again, if the offender is sentenced to—

Death, or
Penal servitude,

or has sentence of death recorded against him, he will be disabled from making contracts, from suing at law, and from charging or parting with his property, until he is pardoned or has suffered his punishment and been discharged from custody: and an administrator may be appointed to take charge of his property until such pardon or discharge, or until he dies, or is made bankrupt. **Further provisions in case of sentence to death or penal servitude.**

18. A person who has once been convicted of either felony or misdemeanor will also stand in a worse position if he is subsequently convicted of another crime, and his punishment may in many cases be increased where a previous conviction is proved; these, and similar points, will **Previous conviction.**

Ch. VII. be noticed hereafter where it is thought necessary, when the various offences are dealt with in detail.

Punishments for felonies and misdemeanors generally.

19. Every crime is punishable in some way, and throughout the following pages it may be taken generally that any crime to which no specific punishment is declared to be appropriated may be punished, if a felony, by seven years penal servitude, and if a misdemeanor, by fine and imprisonment (but without hard labour), at the discretion of the court.

II. RESPONSIBILITY FOR CRIME. Persons not criminally responsible.

20. There are, of course, many cases in which it would be obviously unfair to make a person criminally responsible for doing a particular act, though under ordinary circumstances, such an act would be undoubtedly a crime. The following are the principal cases of this kind recognised by English law.

Children.

21. A child is considered to be incapable of committing a crime before the age of seven years; and any act of a child between the ages of seven and fourteen can only be held to be a crime, if it is shown affirmatively that the child had sufficient capacity to know the nature and consequences of his act, and to appreciate that he was doing wrong.

Insane persons.

22. A person cannot be convicted on a criminal charge in respect of an act done by him while labouring under such unsoundness of mind as made him incapable of appreciating the nature and quality of the act he was doing, or that such act was wrong. Thus, if a man kills another under the insane delusion that he is breaking a jar, he will not be criminally responsible.

Presumption in favour of sanity.

23. Every person is, however, presumed to be sane and to be responsible for his acts, until the contrary appears, and it must, therefore, be clearly established that the accused is brought within the terms of the exception as above laid down before he can have the benefit of it (a). Unless a person is brought strictly within the terms of the exception, it is no excuse whatever to show that his mind is affected by disease. For instance, the fact that a person is under the delusion that his nose is made of glass will not in any way excuse him if he commits a crime, and it is shown that the delusion had no connection with the crime.

Cause of insanity immaterial.

24. It is immaterial whether the unsoundness of mind is due to natural imbecility, or produced by disease, or whether the disease itself is due to the sufferer's own dissipation, as for instance, in the case of *delirium tremens*.

(a) When on the trial by court-martial of a person charged with an offence, it appears that such person committed the offence, but was insane at the time of its commission, the court must find specially the fact of his insanity.—Army Act, s. 130 (2).

25. If, however, the unsoundness of mind is the result of mere temporary intoxication from liquor or drugs, it will be no excuse if the intoxication is voluntary, but it will be an excuse if the intoxication is produced by fraud, or otherwise against the will of the patient. Even voluntary intoxication will often be an important fact in considering the intention with which an act was done; for instance, if a person is accused of wounding another with intent to murder him the fact that the accused was very drunk at the time ought to be taken into account in considering whether the intent is established; though the intent may of course be proved by evidence of premeditation or other facts.

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Temporary
intoxica-
tion

26. A married woman who commits a crime in the presence of her husband, is (except in the case of treason, murder, or robbery) presumed *prima facie* to be acting under his coercion, and such coercion is considered to excuse her act; this presumption, however, may be rebutted if it is shown that, in fact, she was not coerced.

Married
women.

27. An act may also be excused if committed by a person acting in company with others, provided that he is compelled to act as he does by threats of death or serious injury continued during the whole time that he so acts.

Compul-
sion.

28. In extreme cases an act may sometimes be justified on the plea of necessity, if it is done by a person in order to avoid inevitable and irreparable evil to himself or those whom he is bound to protect, though, of course, the act must not be disproportionate to the end to be attained, nor must more be done than is absolutely necessary to attain that end. Thus if the governor of a colony acts in an illegal and oppressive manner, the council of the colony are justified in deposing and putting him under arrest, and assuming the government themselves, if these are the *only means* by which irreparable mischief to the colony can be avoided.

Necessity.

29. Ignorance of *law* is no defence to a criminal charge, but it may properly be taken into consideration in determining the amount of punishment to be awarded.

Ignorance
of law.

30. Ignorance of *fact* will very often be an excuse, *i.e.*, a person's conduct will, as a rule, be judged as though the facts which he honestly and on reasonable grounds believed to exist at the time of such conduct had been the actual facts. Thus if a person makes a thrust with a sword at a place where he reasonably believes a burglar to be, and kills a person who is not a burglar, his conduct must be judged as though the person killed were really a burglar. But this excuse will not avail a person if his ignorance proceeds from wilfulness or negligence. In some few cases even an honest and reasonable belief will not protect a man, if he is actually mistaken, and a man therefore does

Ignorance
of fact.

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the act at his peril ; for instance, if a man abducts a girl from her father's house, he will be criminally responsible if she is actually under sixteen, though he may have honestly believed that she was over sixteen on what may have reasonably appeared to him perfectly conclusive evidence.

Parties to crime.

31. Where a person has no excuse to prevent his being criminally responsible for the result of his actions, his responsibility will not be limited to the simple case where he is present, and actually commits a crime with his own hand. If, for example, a man sets a man-trap to catch trespassers, and does catch one, and injures him severely, he is responsible though he was not present at the time.

Innocent agent.

32. Again, where a person does an act by means of an innocent agent, as if a man sends a child under seven to take some money from another's till, he is responsible.

Assisting in a crime.

33. Similarly, if a person assist another in the commission of a crime, he is responsible as though he had committed it himself ; and even if such assistance is indirectly given, as for instance, if two or three men go out together to commit a burglary, and one waits at the corner of the street to keep watch while the others commit the burglary, the watcher will be guilty of burglary equally with the others, though he never goes near the house. On the other hand, if the crime charged involves some special intent, it must be shown that the assistant was cognisant of the intentions of the person whom he assisted ; thus, if an offender is charged with wounding with intent to murder, it must be shown that an assistant, who is charged with the same crime, not only assisted him in what he did, but also knew what his intention was, before he can be convicted on the full charge.

Common intent.

34. If several persons go out with a common intent to execute some criminal purpose, each is responsible for every crime committed by any one of them in furtherance of that purpose, but not for any crime committed by another member of the party which is unconnected with the common purpose, unless he personally instigates or assists in its commission.

Instigating a crime.

35. A person is in all cases fully responsible for any crime which is committed by another by his instigation ; even though the crime may be committed in a different way from the one that he suggested, as, for instance, if a person were to instigate another to murder a man by shooting him, and the murderer stabbed the man instead, the instigator would still be responsible. Further, he is responsible for any other crime which may, and was likely to, result from such instigation, as, for instance, the murder of a man whose robbery he had instigated, in the course of such robbery. But a person will not be respon-

sible for a crime which he may have instigated another to commit, if he countermanded its execution, and notice of such countermand was received by the person instigated before the commission of the crime (a): nor where he instigates one crime will he be responsible for the commission of another unconnected therewith.

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36. Mere knowledge that an offender is about to commit a crime, and even conduct influenced by such knowledge, will not (except perhaps in some cases of high treason) make a person responsible for that crime unless he does something actively to encourage its commission; for instance, if a man knows that two others are going to fight a prize-fight, and acts as stake-holder, but takes no other part in the circumstances attending the fight, at which he is not present, and one of the prize-fighters is killed, the stakeholder will not be responsible for his death.

Knowledge of intended crime.

37. Under the old law, the responsibility of a person in the cases just noticed varied considerably according as he was what was termed a principal in the first degree, a principal in the second degree, an accessory before the fact, or an aider and abettor, but these distinctions have now been practically abolished, and the responsibility made in all cases the same; they will therefore not be further mentioned.

Abolition of former distinctions.

38. A person may in some cases incur criminal responsibility, even after a crime has been committed, if the crime is a *felony*, and he becomes what is called an accessory after the fact, *i.e.*, if he assists the felon to evade justice (though knowing that he has committed a felony) either by comforting, hiding, or otherwise actively assisting him, or by opposing his apprehension, or rescuing him from arrest, or by voluntarily permitting the felon to escape from his custody, where the accessory is himself the custodian. This rule is, however, subject to the exception that a wife will not be held responsible for comforting and relieving her husband. The mere allowing a felon to escape, without giving him active assistance, will not make a person an accessory after the fact, except in the case above-mentioned, where the accessory is himself the custodian. An accessory after the fact is himself guilty of felony, and liable to two years imprisonment, and he may be convicted of the offence, even though the principal felon has not been tried, if the fact of the guilt of the principal felon be first proved (b).

Accessory after the fact.

39. An endeavour to commit or to procure the commission

Attempt to commit a crime.

(a) Of course, though the execution of the crime was countermanded, the instigator would still be liable to be prosecuted for the misdemeanour of inciting to commit a crime, though not for the crime itself.

(b) As to accessories after the fact to murder, see para. 110.

(M.L.)

CH. VII. of a crime, may, in some cases, render a person criminally responsible, even though the endeavour is unsuccessful. Thus a person is guilty of a misdemeanour (a) if he conspires with or incites another to commit a crime, whether the crime is actually committed or not. And if a person makes any actual attempt to commit a crime, this also is in itself a misdemeanour, though the attempt is unsuccessful.

What
amounts to
attempt.

40. A mere intention to commit a crime unaccompanied by acts will not amount to an "actual attempt," nor will acts themselves, if they are merely preparatory to the commission of the crime. For instance, if a man goes to Birmingham to buy dies to make bad money, the mere going there is not an attempt to make bad money; but, on the other hand, any act which forms part of a series of acts which, *if uninterrupted*, would constitute the offence, is a sufficient attempt; thus, if the man had not only gone to Birmingham, but had actually bought the dies, he would have been guilty of an attempt to make bad money. A man cannot, however, be convicted of attempting to commit a crime, if the series of acts, of which the alleged attempt formed part, could not have resulted in the commission of the crime, *even if they had been uninterrupted*; for instance, if a man puts his hand into another man's pocket in order to steal whatever is in it, though this would of course be an attempt to steal if there was anything in the pocket, it is no attempt to steal if the pocket is empty.

Intention.

41. In some cases the intention with which an act is committed becomes very material; where this is the case, the intention may either be proved by independent evidence, as, for instance, by words proved to have been used by the offender, or may be presumed from the act itself, according to the maxim that a man intends the natural consequences of his own act. In other words, this maxim is that the mode of discovering a man's intention is to consider what were at the time of his act the natural consequences of that act. Thus, if A sets fire to B's mill, the intent of A to injure B is inferred as being a natural consequence of the act of A in setting fire to the mill.

Intention is distinct from motive, which is an ulterior intention. In the above case A's motive, or ulterior intention, may have been to defraud an insurance company.

And so when B was charged with instigating W to assault C with a billhook with intent to disfigure him, and stated in defence that he wished W to kill C; although his motive or ulterior intention was to kill, yet he was held to have had an intention to disfigure C, because the

(a) As to the punishment, see para. 19.

disfiguring was the natural consequence of the act instigated. **Ch. VII.**

If a man bound by law to perform any duty does an act which necessarily causes or is particularly fitted to cause a failure in the performance of that duty, he will be held in law to have intended to fail, and therefore to have wilfully failed, to perform that duty.

Thus, for example, if a soldier in charge of a prisoner leaves him in a public-house, and goes away to visit a friend elsewhere, and the prisoner escapes, the soldier must be considered to have wilfully permitted the prisoner to escape, because the escape was the natural result of the soldier's act; but if there was no evidence of any deliberate act of the soldier contrary to his duty, or if the escape was due to mere ordinary carelessness in the course of the performance of the soldier's duty, then he could not be held wilfully to have permitted the prisoner to escape.

(ii.) *Offences against the Person and Reputation (a).*

42. Broadly speaking, any person using force against or causing injury to the person of another without his consent, is criminally responsible for all the consequences which result therefrom, unless he can show some legal justification or excuse. Indeed, a person is even responsible in many cases where no actual force is used or actual injury caused, if he threatens to use force or to cause injury, or does an act which endangers the safety of another.

I. GENERAL OBSERVATIONS ON USE OF FORCE. Responsibility for use of force.

43. A person is considered to use force as much where it is applied indirectly as where it is applied directly. Thus, if a person whips the horse on which another is riding, and so causes it to run away with him; or puts an obstruction in the way of a train and so upsets it; or cuts a hole in front of a skater and so causes him to fall into the water; or pulls a chair away on which another is about to sit and so causes him to fall to the ground; he is in each case considered to use force against the other as much as if he actually struck him.

What amounts to use of force.

44. In cases of killing or maiming (b), even the consent of the sufferer will be no excuse, unless the killing or maiming is the result of a surgical or some similar operation reasonably and properly performed for the benefit of the sufferer, in which case consent will be an excuse, and will even be presumed to have been given where the sufferer is unable to give it. Thus, if a person meets with

Consent. In cases of killing or maiming.

(a) The principal statute relating to offences against the person is 24 & 25 Vict., c. 100.

(b) As to what amounts to a maim, see below, para. 78.

(M.L.)

Ch. VII. — an accident which renders the amputation of a limb desirable, his consent to the amputation will justify a person in performing it; and if the sufferer should be rendered insensible or mad by the accident, his consent to the amputation will be presumed, though in the first case he could not give it; and in the second might even forcibly resist. So, also, if a person be drowning and insensible, and another to save his life pulls him out of the water by a hook which maims him, consent to the injury will be presumed.

In other cases. 45. In cases other than killing and maiming, consent will almost always be an excuse, unless such consent is obtained by fraud. In the few cases where consent is not an excuse, special attention will be called to the fact hereafter.

Accident. 46. A person will also be legally excused from criminal responsibility for causing an injury, if the injury is the result of a pure accident, and is not to be attributed in any way to any carelessness or negligence, or to an unlawful act on his part.

Illustrations. 47. Thus if a woodcutter is lawfully cutting down a tree and the head of his axe flies off, or if a man is lawfully riding down a road and his horse is whipped by another person, and caused to start off, or if a man is lawfully shooting at game or any other object, and injuries in any of these cases result to a bystander which cannot be attributed to negligence on the part of the woodcutter, rider, or shooter, as the case may be, he will not be responsible for the injuries caused.

Further illustrations. 48. Again, if a person points a gun at another in sport and pulls the trigger without having good grounds for believing or having taken any proper precautions to ascertain that the gun was unloaded, he will be responsible, as the accident might clearly have been prevented if he had not been culpably negligent; but if a gunmaker showing a gun to a customer and having good reason to believe that it is unloaded, pulls the trigger and the gun is really loaded and shoots the customer, the gunmaker will not be responsible, even though he had not taken every possible means to ascertain whether the gun was or was not loaded.

Responsibility for unlawful act. 49. In each of the above illustrations it will be noticed that it is assumed that the act from which the injuries resulted was not in itself an unlawful act. For if the act was in itself unlawful, as if the woodcutter was doing an unlawful and malicious injury to the property of another, if the rider was a highwayman in the exercise of his calling, if the shooter was a poacher, or if the man presenting a loaded gun was assaulting the person shot, the offender would in each case be criminally responsible for the injuries caused. This qualification is, however, con-

fined to the cases of acts which are really *unlawful*, and not mere breaches of excise laws or similar regulations; for instance, if the shooter, instead of being a poacher, were merely shooting without a game licence, this would not render him criminally responsible. Ch. VII.
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50. In some special cases the law permits the intentional use of force and infliction of injuries on the person of another, though without his consent, expressed or implied, where strong reasons exist for the exception. Thus, the use of force is permitted in many cases relating to the administration of justice, prevention of crime, self-defence, the defence of property, the preservation of discipline, and the defence of the realm; but the amount of force which may be used, and the circumstances under which it may be used, vary so widely in the different cases that it will be necessary to consider them in some detail. Justifiable
use of force.

51. The great principle is that *no more force* may be used in any particular case than the person using it believes, and has reasonable grounds for believing, to be necessary to effect the object in respect of which he is entitled to use force. So long as this principle is observed, a person is not responsible for the consequences which may result in any particular case from the use of any force which is not in excess of that allowed in the class of cases to which it belongs. General
principle.

52. Thus, if a person is entitled to use whatever amount of force may be necessary in order to effect a particular object, he is justified in inflicting any injury, or even death, if he reasonably believes that he cannot otherwise attain that object. So, also, if a person is entitled to use any amount of force to effect a certain object, provided that he does not use it in a manner intended or likely to cause death or grievous bodily harm (a), he will be justified in using whatever force he reasonably believes to be necessary to effect his object, subject to that proviso; and if death or grievous bodily harm should *unintentionally* result from the use of force which could not reasonably be expected to produce such consequences, he will not be responsible. For instance, if a person who is entitled to use force, subject to the proviso above mentioned, for the purpose of making an arrest, trips up the person to be arrested, and the person unfortunately falls on his head and dies in consequence, the tripper up is not responsible, as it could not have been reasonably anticipated that such an act would cause either death or grievous bodily harm. Illustrations
of amount of
force
justifiable.

53. In dealing with the particular cases in which the use of force is justifiable, it may be convenient to consider Execution
of orders.

(a) As to what amounts to grievous bodily harm, see below, para. 78.

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adminis-
tration of
justice, &c.

first the cases where the person using force is acting as a ministerial officer in execution of the orders of some superior authority. In all these cases, if a person is justified in using force at all, he or any person lawfully assisting him is justified in overcoming any violent resistance which may be made to the lawful use of such force, and in using whatever amount of force may be necessary for that purpose. The right to use force in obedience to the orders of superior authority depends mainly on the question whether or not such authority when giving the order is acting as a court : that is to say, whether such authority, whether consisting of one person or several, is or is not acting in a judicial capacity, in the exercise of some jurisdiction conferred by law. Thus a justice of the peace disposing of cases summarily, or issuing warrants, would be considered to be acting as a court.

Ministerial
officers.

54. The ministerial officers of a court being bound to execute its lawful orders, and being, of course, in many cases unable to examine into the grounds of each particular order, are treated with special consideration. The general rule in such cases is that any duly authorised person is justified in using whatever force may be necessary in order to execute the lawful order of a court of competent authority (a) ; but with this important qualification, that he must not use such force as is either likely or intended to cause death or grievous bodily harm (b) (unless he is violently resisted), except where he is specially required to do so by the order itself, or where the order is a warrant of arrest for treason, felony, or piracy, in which cases he may at once use whatever amount of force may be necessary. Should a person be unable to justify himself under the rule above stated, it will in general be no excuse for him to show that he acted under the orders of some superior civil or military authority. His justification will, in such cases, depend upon the same considerations as though he had acted entirely on his own responsibility ; and the fact of his having received the orders will merely be of importance as a fact in the case which may throw light upon the state of his mind, as to reasonable belief, intent, or otherwise (c).

Amount of
force which
may be
used in
execution
of orders.

Assisting
peace
officer.

55. There are some few cases, however, in which a person derives some protection from the fact that he is acting under orders, though they may not be those of a court, as where a person is lawfully called upon to assist a peace officer in the execution of his duty. In such cases a

(a) As to what are lawful orders of a court of competent authority, see Chapter VIII, para. 101.

(b) As to what amounts to grievous bodily harm, see below, para. 78.

(c) For an illustration of this, see Chapter VIII, para. 97.

person is bound to go to the officer's assistance, and will be justified in using force to the same extent as the officer himself; these cases are, however, not very numerous. **Ch. VII.**

56. The law respecting the use of force for the suppression of riots and breaches of the peace, whether under the orders of a superior authority, or on the sole responsibility of the person using it, is dealt with in another part of this work, and will therefore not be treated of here (a). **Suppression of riot.**

57. A person may also be justified in many cases in using force for the purpose of making an arrest on his own responsibility and without the order of any superior authority; but such justification will depend in great measure on the question whether the crime committed or supposed to have been committed is treason, piracy, felony, or misdemeanor (b). **Arrests without warrant.**

58. Any amount of force may be used by a person who believes on reasonable grounds that another is about to commit any treason or felony by open force, in order to prevent such commission. It must be carefully noticed that this right will not (except where the person or property of the person using the force is concerned) extend to the case of felonies unaccompanied by force, as, for instance, pocket-picking; or to misdemeanors; but only to felonies which are accompanied by force, such as murder, burglary, rape, robbery, or the like. **Prevention of felony.**

59. A person may, however, in all cases use any amount of force which is reasonably necessary for the defence of himself or his property, if he is not himself in the wrong, and such force is not unreasonably disproportioned to the danger which is apprehended (c). **Defence of person and property.**

60. Thus if an unprovoked assault is made upon a person (not being in his own house) he is justified in using moderate force in self-defence, but not in inflicting death or grievous bodily harm intentionally upon his assailant, unless he is himself apprehensive of grievous injury, and sees no other means by which he can avoid the assault; if, however, the assault is so fierce that he reasonably believes himself to be in serious danger, which he cannot otherwise avoid, he is justified in using all necessary force in his defence. **Illustrations.**

61. Even if a person has provoked the assault in the first instance, and thus put himself in the wrong, and a conflict ensues, yet if he has never intended or endeavoured **Further illustrations.**

(a) See Chapter XIII.

(b) The law on this point will be found stated in detail in Steph. Dig. Crim. Law, and other works on Criminal Law.

(c) A person will be equally justified in preventing offences against the person or property of any intimate connection; i.e., of a husband, wife, parent, child, master, or servant.

Ch. VII. to do any serious injury to his opponent, and has after some time declined to continue the conflict, and endeavoured to retreat from it as far as he possibly can, he will then be justified in using all necessary force in his defence, if he reasonably believes that he is in serious danger, which he cannot otherwise avoid. This, however, is an exceptional case, and the privilege will be construed strictly, and will not extend to cases where a person feigns a retreat, or where he has in the first instance made a murderous attack on his opponent, or where a duel has been arranged between the parties, or any similar case.

Further illustrations.

62. But if a person is assaulted in his own house, that is to say, in a house of which he has peaceable possession at the time when the assault begins, he is not bound to avoid the assault, for this would be to give up his house to the assailant; but he may at once resist and use all necessary force for the purpose, and even pursue his assailant until danger is past.

Defence of property against trespassers.

63. A person who is in peaceable possession of property of any description is entitled to defend it against trespassers, and to use force for the purpose of removing them from his land, or of retaining or re-taking his goods from them; but he must not intentionally strike or hurt an ordinary trespasser unless he is resisted, in which case he may use such force as is reasonably necessary to overcome such resistance, though even in this case, unless himself assaulted and in danger, he must not intentionally inflict death or grievous bodily harm. If, however, the trespass is a serious one, as where a trespasser endeavour forcibly to break and enter a dwelling-house with the intention of committing an indictable offence therein, any amount of force may be used to prevent him; and if it is night, such force may be used even though the trespasser has really no such intention, if the person using the force reasonably believes that he has such an intention.

Maintenance of discipline.

64. The law also permits force to be used for correction or for the maintenance of discipline. Thus a parent, schoolmaster, or master may forcibly correct any child, pupil, or apprentice under his care. Again, the officer in command of a ship on a voyage may use force for the maintenance of discipline. In all such cases the force used must be reasonable and not excessive, otherwise the person using the force will be fully responsible for the consequences.

Enemy.

65. Finally, the law permits the use of force against the enemies of the realm in the actual heat and exercise of war.

Subject to the above exceptions, in which the use of force or the causing of injury is excused or justified, the general rule will apply that an offender is criminally

responsible for the use of force or the causing of injury, **Ch. VII.** according to the gravity of his offence.

66. A person is not ordinarily considered to cause injury to another by the mere omission or negligent performance of an act; thus, if a man sees another drowning and is able to save him by holding out his hand, but omits to do so, even *in the hope* that the other may be drowned, still he is not criminally responsible. But, on the other hand, where the law considers that a person is bound to perform some particular act, he is held responsible if he omits to do so. For example, a master is responsible for neglecting to provide an apprentice or servant with necessaries (a); and every person who has charge of another, *e.g.*, a lunatic or prisoner, is bound to provide him with necessaries if he is so helpless as to be unable to provide himself; and if death results from a neglect of such duty, the person in charge will be responsible unless he can show some good excuse.

II. OBSERVATIONS ON NEGLIGENCE.
Neglect to perform an act.

67. Any person who has under his charge any animal or thing, or who makes or maintains anything, which may endanger human life, must take proper precautions to avoid danger to others; and if he omits to do so, without lawful excuse, he is responsible for the consequences.

Neglect of person in charge of dangerous animals, &c.

68. Similarly, if a person undertakes to do any act the omission of which may endanger human life (as, for instance, the turning of points on a railway), and omits to discharge that duty without lawful excuse, he is responsible for the consequences. Again, if a person undertakes (except in cases of necessity) to administer surgical or medical treatment, or to do any other act which may be dangerous to human life, he is responsible if death results from a want of reasonable care and skill on his part.

Neglect in other cases.

69. The various offences which may be committed against the person will now be considered in detail. They vary greatly, both in kind and in degree; and some of them only become offences if they constitute what are technically called *assaults*.

III. OFFENCES AGAINST THE PERSON.

70. A person is said to commit an *assault* if he intentionally applies force to the person of another, either directly or indirectly, without his consent, or even if he only attempts or threatens by some act or gesture to apply such force, provided that he either is able, or is reasonably believed by the other to be able, to at once effect his purpose. Mere words, however, will not constitute an assault.

Assault.

71. Consent, to be an answer to a charge of assault, Consent.

(a) See further as to this, para. 139.

Ch. VII. must be *bond fide* consent, and not mere acquiescence, nor obtained by fraud; and where any male or female on whom an indecent assault is charged to have been made is under thirteen, it is no defence to prove that he or she consented to the act of indecency.

Acts which do not amount to assault. **72.** Ordinary acts, which are done in a reasonable manner in the common intercourse of life, are not considered to be assaults; thus, if a man puts his hand on another's shoulder, to attract his attention, or catches hold of another to save himself from falling, or, if a crowd of people going into a theatre simply push and are pushed against each other without unnecessary violence, these are not assaults.

Common assault. **73.** Assuming, however, that an assault is committed, however slight, it will at the least be a common assault, which is a misdemeanor, and punishable with a year's imprisonment. If there are any aggravating circumstances, an assault, even of the slightest character, may become a much more serious offence.

Def. Indecent assault on female. **74.** Thus, if the assault be on a female, and accompanied with any circumstances of indecency, the offence, though still a misdemeanor, is punishable with two years' imprisonment (a).

On male. **75.** Again, if the assault be on a male person, and accompanied with circumstances of indecency, or an intention to commit sodomy, though still a misdemeanor, the offence becomes punishable with ten years' penal servitude.

Assault with intent to commit felony, or to resist arrest. **76.** So if an ordinary assault be committed, either
 On peace officer. With intent to commit a felony; or
 With intent to resist the lawful arrest or detainer of any person whatever; or
 On a peace officer in the execution of his duty, or any person assisting him;

the offence, though still a misdemeanor, becomes punishable with two years' imprisonment (b).

Assault occasioning actual bodily harm. **77.** In any case, if an assault occasions actual bodily harm—that is, any hurt or injury calculated to interfere with the health or comfort of the person on whom it is inflicted, though it may be neither permanent nor serious—the assault is punishable with five years' penal servitude.

Definitions of injuries. **78.** Here may be noticed briefly the other principal kinds of injury of which the law takes special cognizance.

(a) See also para. 128.

(b) See also as to assaults on magistrates, &c., in connection with wreck, Stephen, Dig. Crim. Law, p. 164.

These are injuries which cause—(1) death; (2) maiming; (3) disfiguring; (4) disabling; (5) grievous bodily harm; (6) wounding. Ch. VII.

- (1.) Injuries causing death will be specially mentioned hereafter (a).
- (2.) A maim is practically any injury which makes a man less fit for fighting, as the loss of eye or limb, castration, &c.; but other injuries, however disfiguring, such as the loss of a nose, are not maims.
- (3.) Disfiguring includes any external injury which detracts from the personal appearance.
- (4.) Disabling is the doing something which creates a permanent disability, and not a mere temporary injury.
- (5.) Grievous bodily harm need not be either permanent or dangerous; it is sufficient if it seriously interferes for a time with the health or comfort of the person on whom it is inflicted.
- (6.) A wound is a division of the whole skin covering any part of the body; thus, a mere division of the cuticle or outer skin is not sufficient, but a division of the inner skin, where there is no cuticle, as within the lips, is sufficient; the wound may be made in any way, either by laceration, contusion, incision, puncture, or otherwise.

In every case where injuries of any of the above kinds are inflicted unlawfully and maliciously, an offence of greater or less gravity is committed.

79. In considering the offences involving these kinds of injury in detail, careful attention must be paid, first, to the extent and nature of the injury or danger caused; secondly, to the intention (if any) with which the act causing such injury was done; and thirdly, to the special circumstances (if any) attending the act. Difference in offences.

80. The simplest case of the kind is where a person has simply wounded or inflicted grievous bodily harm upon another unlawfully and maliciously; in such case he is at the least guilty of a misdemeanor, and liable to five years' penal servitude. Unlawful wounding, &c.

81. The crime, however, becomes much more serious if the offender wounds or inflicts grievous bodily harm upon another, or shoots or attempts to shoot at another, with intent to maim, disfigure, disable, or do some grievous bodily harm to such person or any other person, or to prevent the lawful apprehension or detainer of any person Wounding &c., with intent.

(a) See para. 90, *et seq.*

Ch. VII. whatever ; in such case the prisoner is guilty of felony, and liable to penal servitude for life (a).

Dangerous acts.

82. It will be noticed that the mere attempt to shoot with any of the intents above mentioned is felony, and there are many other cases where the mere doing of a dangerous act with a criminal intention is in itself a crime.

Impeding persons escaping from wrecks.

83. Thus if a vessel is wrecked or in distress, and any persons are on board, or have just quitted her, the unlawful and malicious preventing or impeding any of such persons in their endeavours to save their own lives, or of any other person in his endeavour to save the life of any such first-mentioned persons is a felony, and punishable with penal servitude for life, whether or not any actual injury results from the offence.

Setting of spring-gun &c.

84. Again, the setting of a spring-gun, man-trap, or other engine calculated to destroy human life or inflict grievous bodily harm with intent that the same may destroy or inflict grievous bodily harm upon trespassers, &c., is a misdemeanor punishable with five years' penal servitude, though no one is actually hurt, unless it be so set under certain conditions in a dwelling-house for the protection thereof.

Placing explosives in or near buildings, &c.

85. The unlawful placing of any explosive in or near any building or vessel, with the intention of doing bodily injury to any person, is a felony, and punishable with penal servitude for fourteen years, whether or not any explosion takes place or any injury is caused. The use of explosives *directly* for the purpose of causing injury is a more serious offence ; thus, if any person unlawfully explodes any explosive, or causes any explosive or dangerous substance to be sent to or received by any person, or to be laid in any place, or throws any corrosive or explosive substance at or applies it to any person with *intent* to burn, maim, disfigure, or disable, or do grievous bodily harm to some person, such offender is guilty of felony, and liable to penal servitude for life, even though no injury is actually caused. Again, if a person unlawfully explodes an explosive, and thereby *actually* burns, maims, disfigures, disables, or does grievous bodily harm to any person, even without such intent as above mentioned, he will be equally guilty of felony, and liable to penal servitude for life.

And by the Explosive Substances Act, 1883, the law has been made still more stringent, and it is now a felony punishable most severely, either—

(a) An attempt to shoot can only be made with a firearm which is loaded at the time ; pulling the trigger is an attempt to shoot, but an attempt to pull the trigger is not.

(a.) To unlawfully and maliciously cause by any explosive substance an explosion of a nature likely to endanger life, or to cause serious injury to property, whether any injury to person or property is actually caused or not; or

(b.) For any person within or (being a subject of Her Majesty) without Her Majesty's dominions to unlawfully and maliciously—

(1.) Do any act with intent to cause by an explosive substance, or conspire to cause by an explosive substance, an explosion in the United Kingdom of a nature likely to endanger life, or to cause serious injury to property; or

(2.) To make, or have in his possession, or under his control any explosive substance with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to endanger life or cause serious injury to property in the United Kingdom; or

(3.) For any person to make, or knowingly have in his possession, or under his control any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or control for a lawful object, unless he can show that he did make it or have it in his possession or control for a lawful object; or

(4.) For any person within, or (being a subject of Her Majesty) without Her Majesty's dominions, to procure, counsel, aid, abet, or be an accessory to any crime under the said Act.

No proceedings, however, should in any case be taken under the said Act without first communicating with and obtaining the approval of the Home Authorities, except so far as may be necessary to ensure the safe custody of an accused person; but this of course will not prevent the accused being proceeded against at common law or under any other statute which may be applicable to the case, provided that he is not punished twice for the same criminal act. It should be mentioned that "explosive substance," as used in the said Act, includes any materials for making an explosive substance, and also any apparatus, machine, implement, or materials used, or intended to be used, or adapted for causing, or aiding in causing any explosion in or with any explosive substance or any part of such apparatus, machine, or implement (a).

(a) See further as to injury to property by explosives *infra.*, paras. 258, 259, and 268.

Ch. VII. **86.** A person who unlawfully causes another to take poison or any other noxious thing, with the intent that he may be injured, aggrieved, or annoyed (*a*), is guilty of a misdemeanor, and liable to five years' penal servitude, whether or not the object is attained; but if a person unlawfully causes another to take poison, and thereby endangers his life, or inflicts grievous bodily harm, this amounts to a felony, and is punishable with ten years' penal servitude.

Garotting. **87.** Garotting, that is

An attempt, by any means whatever, to choke, suffocate, or strangle any person; or

An attempt by any means whatever which are calculated to choke, suffocate, or strangle, to render any other person insensible or incapable of resistance;

^{OR}
An administering or attempting to administer to any person any drug or stupefying matter,

with the intention of enabling the offender to commit, or to assist someone else in committing, some indictable offence, is a felony, and punishable with penal servitude for life.

Furious driving, and endangering safety of person on railway by negligence.

88. The doing of a dangerous act may also be a crime, even though the offender has no criminal intention whatever, if injury or danger be actually caused thereby. Thus if any person who has charge of any vehicle causes bodily harm to any person by furious driving or racing, or other wilful misconduct, or by wilful neglect; or if any person causes the safety of any person travelling or being on a railway to be endangered by any unlawful act or wilful neglect or omission on his part, the offender in each case is guilty of a misdemeanor, and liable to two years' imprisonment.

Furious driving, &c., with criminal intent.

89. In the above two cases criminal intention is supposed to be absent; if that were present, the offences would at once change their character; thus in the first case the offence would be at least an assault causing actual bodily harm, even if it did not amount to causing grievous bodily harm with intent so to do; in the latter case the offender would not only come within the ordinary law as to assaults, attempts to commit felonies, &c., but would probably come within the statute under which it is a felony punishable with penal servitude for life unlawfully and maliciously to put anything on a railway or to move rails, sleepers, points, &c., or to hide signals or show false signals, or to do anything else *with intent* to endanger the safety of anyone travelling on the railway, or to throw

(*a*) An intent to excite sexual passion is within this provision.

anything or cause anything to fall or strike at, against, into, or upon any vehicle used on a railway *with intent* to injure someone on that vehicle or on some other part of the same train (a). CH. VII.

90. So far it has been assumed that the offences dealt with have not actually resulted in death, or been committed with the intention of causing death. It now becomes necessary to consider the cases where death actually results. The general rule is, that any person killing a human being is criminally responsible, unless he can show some legal justification or excuse; the consent of the person killed being, as already stated, no excuse whatever. Homicide.

91. A child is considered to become a human being within the meaning of this rule as soon as it has wholly proceeded in a living state from the body of its mother, and has an independent circulation, whether it has breathed or not, and whether the umbilical cord has or has not been severed; and a person is responsible for killing such a child though the injuries of which it dies were inflicted by him before or during birth; but a person is not responsible for killing a child which never becomes a human being, as if he kills it outright before or during birth, even though the child may have breathed. When a child becomes a human being.

92. In determining whether a person has killed another, the general principle applies that a person is responsible for the consequences which naturally result from his conduct, but no further. Therefore if a person injures another dangerously, he is responsible if death results, either from the injury itself directly, or from a neglect of proper treatment of the injury, or even from improper treatment of the injury, if it be applied in good faith for the purposes of cure. But if a person injures another in a manner which is not in itself dangerous, and which is only rendered dangerous by the application of improper treatment, and death results, then inasmuch as the improper treatment is really the cause of the death, the person causing the injury is not responsible. When death considered the result of a person's conduct.

93. Thus supposing that a person is severely wounded, if he dies either from lock-jaw in consequence of his refusal to allow an operation which might probably have saved his life, or from the performance of an operation which competent surgeons considered advisable, even though it may not really have been necessary, the person inflicting the wound is responsible. If, on the other hand, a person is only slightly and not dangerously wounded, and an incompetent surgeon performs a severe and un- Illustrations.

Ch. VII. necessary operation, which causes death, the person inflicting the wound is not responsible. Similarly, if a person uses or threatens to use actual violence to another and thereby causes him to do an act to escape from such violence which results in his death, but which it might appear natural to do under the circumstances, as for instance if he jumps into a river or out of a window, the offender is responsible for his death.

Accelerating death.

94. A person is deemed to kill another even if he merely accelerates the other's death, and it is no excuse that the person killed would have died very shortly from some other cause. Thus if a man strikes an invalid who could not possibly live more than six weeks, and the invalid dies sooner than he otherwise would in consequence of the blow, the striker is responsible for the death.

Joint responsibility.

95. The fact that the blame may be shared by another will not relieve a person contributing to the death from responsibility; thus if it is the duty of two different persons to see to the performance of a particular duty, and both neglect it, and death is the result, both are responsible; so also if two drivers are illegally racing their carts along a high road, and *one or both* carts run over a drunken man and kill him, both drivers are responsible.

Death must be direct result of conduct.

96. It must be shown that the death was a *result* of the conduct of the accused person; therefore the death must happen within a year and a day from the day on which the accused committed the offence, or the last of the offences which are alleged to have caused it, as otherwise the law presumes that it must have proceeded from some other cause, and the accused cannot be made responsible for it. The death must also be the direct and immediate result of the conduct of the accused; but there is no hard and fast rule applicable in every case to determine whether such an immediate connection between the death and the conduct exists; and whenever a doubtful question does arise, it must be decided according to the circumstances of the particular case.

Accessory before the fact to suicide.

97. It will be remembered that, as already noticed, any person who becomes an accessory before the fact to a crime may be treated as a principal offender. In accordance with this rule, where a person is an accessory before the fact to a suicide he becomes a principal offender, and will be deemed to have killed the person who has committed suicide, his crime being murder or manslaughter, according to the circumstances under which the suicide was effected.

Murder.

98. Assuming that a person has killed another, the law presumes *prima facie* that he is guilty of murder, and it will lie on the accused to prove such facts as may reduce the act to manslaughter or excuse him from all criminal

responsibility. It must not be supposed that the crime is only murder where the offender has deliberately intended to unlawfully kill the very person who is killed. This is one kind of murder, and perhaps the worst kind, but there are many others.

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99 In the eye of the law the crime is murder :—

If the offender has unlawfully caused death by conduct which was intended to cause death or grievous bodily harm to some person, whether that person was the person actually killed or not, or even by conduct which any reasonable man must have known would be likely to cause death or grievous bodily harm to some person, whatever the intention of the offender may have been.

Where death is caused by conduct intended or likely to cause death or grievous bodily harm.

Thus if two men are talking together, and a person shoots at one and kills the other, this is murder, though the man killed may have been the dearest friend of the murderer, and he may have been most anxious not to injure him in any way.

So if a person shoots at a man, believing him to be some one else, and kills him, this is murder, although he probably would not have shot at the man actually killed, if he had known who he was.

So also, if a person explodes a barrel of gunpowder or gallops a horse at a furious pace in a crowded street, and kills some one, this is murder, as a reasonable man must have known that he would be likely to kill or do grievous bodily harm to someone.

So also, if a person exposes a helpless infant in an unfrequented place, and the child dies, he is guilty of murder ; though if he had exposed it in a place where it was likely to be immediately seen and taken care of, and not to suffer seriously, it would only be manslaughter.

So also, if a person having words with another, strikes him violently on the head with an instrument, such as an axe or a spade, and kills him, it will be murder ; but if he merely throws a broomstick at him, in a way which could not be expected to kill him or do him any grievous bodily harm, and death results, it will only be manslaughter.

100. The crime is also murder :—

If the offender causes death by any act done with the intention of committing any *felony*.

Where death is caused by act done with intention of committing felony.

Thus if a person intending to commit a burglary fires at a dog and unintentionally kills a man, this is murder, though if he fired at the dog wantonly without any intention of committing the burglary, it would only be manslaughter.

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So also, if a person unlawfully sets fire to a stack, and a tramp whom he knows nothing about happens to be sleeping under it, and the tramp is burnt to death, this is murder; though if a person were burnt to death in trying to put the stack out, the prisoner would not be responsible, inasmuch as this would not be the natural consequence of his act.

And it will be equally murder though the offender expressly desires not to cause death; thus if a person seizes a woman and muffles her head in a shawl, not wishing to injure her thereby, but merely to stifle her cries till he can get her to a secluded spot and there ravish her, and the woman is smothered on the way, this is murder, though the purpose of the offender is directly frustrated by the woman's death.

It may perhaps be doubted whether this rule would now be carried out in its full strictness, as it must be remembered that in former times death was the ordinary punishment for a felony. Probably in the present day the tendency would be to restrict the rule to cases where the felony attempted to be committed was a serious one, such as rape, burglary, &c.

101. The crime is also murder :—

If the offender unlawfully resists and kills any person who is lawfully endeavouring to execute the duties of an officer of justice, or the orders of some civil or military authority, provided that the offender has sufficient notice, either by production of a warrant, or order, or otherwise, of the capacity in which the person killed is acting. Thus if a thief, being pursued by a person whom he knows to be justified in arresting him, trips that person up, and the person falls on his head and dies in consequence, this is murder.

102. The foregoing definitions of murder are subject to this qualification, that the crime may be reduced to manslaughter if committed under the influence of passion arising from extreme provocation. But it must be distinctly understood that no person is considered to give provocation to an offender merely by doing that which he has a legal right to do, or which the offender has incited him to do with the express purpose of providing himself with an excuse. The provocation must also be great, that is to say, practically speaking, such as might reasonably be expected to put an ordinary person not of an exceptionally passionate disposition into such a passion that he would lose his power of self-control.

103. Thus if a person be assaulted in a manner which causes him actual injury, or which is very insulting, or if he is illegally arrested or imprisoned, or if he sees a man

Where death is caused in resisting lawful authority.

Provocation may reduce crime to manslaughter.

Illustrations.

committing adultery with his wife, he is considered to receive sufficient provocation to bring him within the exception; and if two persons fight on a *sudden quarrel*, both are considered to receive such provocation, whoever struck the first blow. Gestures, however, or injuries to property, or breaches of contract, or slight blows unaccompanied by special insult, are not considered a sufficient provocation; thus if a man is annoyed by persons trespassing on his land, and gives notice that he will shoot at trespassers, and does shoot at one, and hits him in the leg, and the man dies in consequence, this is murder, as there was no sufficient provocation to bring the case within the exception.

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104. Mere words, again, are not considered to afford sufficient provocation, except, perhaps, in some extreme cases, as for instance, if a wife were unexpectedly to tell her husband that she had committed adultery, or if a man were to use words to another expressive of an intention of inflicting serious injury upon him, and accompanied by some act showing that such injury was really intended. Where, however, words are accompanied by a blow, though a slight one, the two may be taken into account together in estimating whether the provocation is sufficient.

Words not as a rule sufficient provocation.

105. It must be clearly established in all cases where provocation is put forward as an excuse, that *at the time* when the crime was committed the offender was actually so completely under the influence of passion arising from the provocation, that he was *at that moment* deprived of the power of self-control; and with this view it will be necessary to consider carefully the manner in which the crime was committed, the length of the interval between the provocation and the killing, the conduct of the offender during that interval, and all other circumstances tending to show his state of mind.

Tests of sufficiency of provocation.

106. Thus if a person strikes another a blow with his fist, and the person struck immediately knocks him down, and then deliberately gets a poker and knocks his brains out by repeated blows, this is murder, though if the person killed had in the first instance struck the prisoner with the poker, and the latter had wrenched the poker from him, and struck him one or more blows in the first impulse of passion and killed him, this would be manslaughter. So also, if a person in turning another out of his house wrongfully gives him a severe kick, and the person kicked, having a knife in his hand, were in the first impulse of passion to stab and kill him, this would be manslaughter; but if instead of that the person kicked goes a quarter of a mile to his own house, gets a

Illustrations.

Ch. VII. — knife, comes back, and stabs the person who kicked him, and then returns to his own house, and puts the knife back in its place, this would show such deliberate thought and design as would point to the presence of judgment and reason rather than of ungovernable passion, and the crime would be murder. So also, if two persons fight on a sudden quarrel, and the fight is commenced on equal terms, and one is killed, the crime would probably, as already pointed out, be only manslaughter; even though in the course of the fight one may have caught up a deadly weapon and killed the other with it, so long as it does not appear that this was done in fulfilment of a deliberate design. But if they are separated, and then arrange to fight a duel the next morning, and do so, if one is killed the other is guilty of murder, though the fight is on equal terms throughout.

No defence that deceased was killed to save offender from dying of hunger.

Punishment of murder.

107. It is no defence to a charge of murder, that the offender killed the deceased for the purpose of eating his flesh, though the offender believed at the time, and had reasonable grounds for believing, that it was the only chance of saving himself from death by hunger, but it might very probably afford ground for a reprieve.

108. Murder is felony, and the punishment is death by hanging, and sentence to that effect must, upon conviction, be pronounced in open court, and the sentence must further direct the burial of the body within the precincts of the prison where the convict is last confined before execution. This latter part of the sentence, however, would probably not be held to be essential in order to make the sentence valid: and a sentence which omitted all mention of the place of burial would not, therefore, be a bad one.

Manslaughter.

109. It may be taken generally, that in all cases where a killing cannot be justified or excused, if it does not amount to murder, it is manslaughter. Manslaughter is felony, and punishable with penal servitude for life.

Accessory after the fact to murder.

110. An accessory after the fact to murder is punishable more severely than accessories in ordinary cases; his offence is a felony, and may be punished with penal servitude for life (a).

Attempt to murder.

111. Attempts to murder are only one degree less criminal than murder itself, and any person doing or attempting to do any act with intent to commit murder is guilty of felony, and punishable with penal servitude for life. The act or attempt alleged, which may be, for instance, a wounding or stabbing, an administering of poison, an explosion of gunpowder under a building, a casting away of a ship, an attempt to drown or to strangle,

(a) As to what is an accessory after the fact, see para. 38.

an attempt to fire a pistol which does not go off, or any similar act or attempt, must be laid in the charge and proved as laid; and it must also be proved that the accused intended thereby to commit murder, which intent may be gathered from the nature of the act itself, or may be proved by other evidence, as, for instance, by threats and words proved to have been used by the accused.

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112. An attempt to commit suicide is not under any circumstances considered to be an attempt to commit murder; it is, however, a misdemeanor, and is punishable with two years' imprisonment.

Attempt to commit suicide.

113. Even where no overt act is done or attempted, a person desirous of committing murder may come within the law, as it is a misdemeanor punishable with ten years' penal servitude to conspire with, or endeavour to persuade, or propose to any other person to murder a third party, whether a subject of the Queen, or within her dominions or not.

Conspiracy to murder.

114. A threat to murder is a felony punishable with ten years' penal servitude, if it is contained in any letter or writing sent to any person; and any person who knows the contents of any such letter or writing, and notwithstanding in any way contributes to its being delivered, is equally guilty with the sender.

Letter threatening to murder.

115. Rape is the act of a man having carnal knowledge, without her consent, of a female who is not his wife; this offence is a felony, and punishable with penal servitude for life. Consent, to be an excuse, must be actual consent and not mere submission, and it must be voluntary, and not extorted by force or fear of immediate bodily harm. Thus, if an idiot submits to a man's having connection with her without actually permitting it, this is no consent, but if she actually permits the act, though from mere sexual instinct, and without really understanding its nature, this is a sufficient consent, and therefore the man is not guilty of rape: he is, however, guilty of a misdemeanor, and punishable with two years' imprisonment, if he knew at the time that she was an idiot or imbecile, and he will be equally guilty of a misdemeanor and punishable in the same way, if he merely attempts to have connection with her under such circumstances. Again, if a man have connection with a woman under pretence that he is treating her medically, and she permits the act to be done simply as a medical operation, but without intending to consent to sexual connection, that is no consent. If the connection takes place when the woman is asleep or in a state of insensibility from a blow given or a drug administered to her by the prisoner,

Rape. What amounts to consent.

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Character of woman. she can of course give no consent while in that state. It is no excuse that the woman consented at first or that she consented after the fact, if the offence was actually committed by force or against her will, at the time of the connection. Nor is it any excuse that the woman was a common strumpet, or the concubine of the ravisher, if the offence was committed by force or against her will; though proof of such facts is admissible, and is of course important in considering whether or not she is likely to have consented (a).

Definition of carnal knowledge.

116. For the purpose of this offence penetration is considered to constitute carnal knowledge; it must therefore be proved that there was actual penetration by some part of the male organ or "res in re"; though the slightest penetration will be sufficient, and it is not necessary to prove that there was such penetration as would be sufficient to rupture the hymen. Whether there was an emission of semen or not is immaterial.

Husband cannot be convicted of rape on wife.

117. A husband cannot be convicted of a rape upon his wife on account of his having had carnal knowledge of her himself under any circumstances; but if another person has committed a rape upon his wife, and the husband has assisted such person to perpetrate the offence, the husband may be convicted of rape, and punished accordingly.

Male under fourteen presumed incapable of committing rape.

118. A boy under fourteen years of age is conclusively presumed to be impotent and incapable of having carnal knowledge, and evidence cannot be received to show that he is capable in point of fact; he may, however, be convicted of rape, if he has assisted another person of competent age to commit a rape, and it appears by sufficient evidence that he exercised a mischievous discretion in doing so.

Offences against morality.

119. It may be well also to mention here various offences which are made punishable in the interests of public morality and decency even though they may not be technically assaults or even strictly offences against the person in some cases.

Carnal knowledge of children.

120. Carnal knowledge of a female child under sixteen years of age is an offence even though the child consents. If the child be over thirteen but under sixteen, the offence is a misdemeanor, and punishable [with two years' imprisonment, but no prosecution for such an offence can be commenced more than three months after the commission of the offence, and it is a sufficient defence to show that the person charged had reasonable cause to believe that the girl was sixteen or more. But if the child be

(a) As to the evidence of husbands and wives in cases of rape, see para. 128, *infra*.

under the age of thirteen the offence is a felony, and punishable with penal servitude for life; and any attempt to commit this last offence is a misdemeanor, and punishable with two years' imprisonment. In any prosecution for either the felony or misdemeanor last mentioned it is no excuse that the offender believed that the child was above the specified age, if she was really below it; and if the child herself or any other child tendered as a witness does not understand the nature of an oath, their evidence may be received though not on oath, if the court is of opinion that the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, but no person may be convicted in any such case unless such unsworn evidence is corroborated by some other material evidence in support of it implicating the accused; and the witness will be liable to be punished for perjury if she gives false evidence exactly as if she had been sworn. Of course if the child does not consent, the offence is also punishable as an ordinary rape.

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121. It is also an offence for any person who is the owner or occupier of any premises, or who has, or acts, or assists in the management or control thereof, to induce or knowingly suffer any girl under sixteen to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether by a particular man or generally. If the girl is under thirteen the offence is a felony and punishable with penal servitude for life, but if over thirteen and under sixteen the offence is a misdemeanor and punishable with two years' imprisonment. It is a sufficient defence to show that the person charged had reasonable grounds to believe that the girl was sixteen or over (a).

Allowing girls to be on premises for purposes of prostitution.

122. It is a misdemeanor punishable with two years' imprisonment, by threats or intimidation to procure or attempt to procure any woman or girl to have any unlawful carnal connection within or without the Queen's dominions; and there are various other offences of the same nature which it is unnecessary to enumerate in detail here. No person can be convicted of any of these offences on the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused.

Procuring women and girls to have unlawful carnal connection.

123. A person is guilty of felony, and punishable with fourteen years' penal servitude, if he—

Abduction of woman with intent to marry, &c

Takes away or detains any woman of whatever age, against her will by force, or—

(a) As to keeping disorderly house, see para. 137, *infra*.

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Takes away or detains any woman who is an heiress (a) of any age, *against her will*, from motives of lucre, whether *with or without force*, or

Fraudulently allures or takes away or detains any woman who is an heiress, and under the age of twenty-one, *whether with or without her consent*, out of the possession and against the will of any person who has the lawful charge of her ;

with the intention that she may be married to or carnally known by himself or any one else.

Abduction
of girl
under
eighteen.

124. It is also a misdemeanor and punishable with two years' imprisonment to take or cause an unmarried girl *under eighteen* to be taken out of the possession and against the will of a person who has lawful charge of her, *with intent* that she may be unlawfully and carnally known by any man whether such carnal knowledge is intended to be with any particular man or generally ; but it is a sufficient defence to show that the person charged had reasonable cause to believe that the girl was eighteen or over.

Of un-
married
girl under
sixteen.

125. The unlawful taking of, or causing to be taken of, an unmarried girl under the age of sixteen out of the possession and against the will of a person who has lawful charge of her is a misdemeanor, and punishable with two years' imprisonment. To constitute this offence, the girl must be taken to some place where the person in whose charge she is cannot exercise control over her, and without the consent of such person, and for some purpose inconsistent with the objects of such control, and she must be taken under the power, charge, or protection of the offender ; but it is quite immaterial whether the girl consents or not, or whether the taking be a permanent or temporary one. Thus if two girls run away together, neither is considered to take the other away ; but if a man persuades a girl under sixteen to leave her father's house and sleep one or more nights with him, or if a man at the request of a girl whom he has seduced elopes with her, this is in either case a sufficient taking away to constitute the offence.

From
lawful
charge.

126. It is, however, necessary that the offender should have reason to believe that the girl is under the lawful charge of someone ; as if a man meets a girl in the street without knowing whether she is in anyone's charge or not, and takes her to a place where he seduces her, and then brings her back to the place where he found her, this pro-

(a) "Heiress" includes almost all females who have any interest in property, either real or personal. It may be noticed that a person convicted of abducting an heiress is incapable of taking any estate or interest whatever in her property.

ceeding, however immoral it may be, does not constitute a criminal offence. **Ch. VII.**

127. It is no excuse that the guardian consented, if such consent was obtained by fraud. Thus if a father allows a man to take his daughter away upon his falsely pretending that he has found a place for her as servant to a lady, and the offender keeps the girl with him two or three nights, and sleeps with her, and then sends her back, there is no such consent on the father's part as will excuse the offender, nor is it any excuse that the offender *bonâ fide* believed, upon reasonable grounds, that the girl was above the specified age, if this was not actually the fact. Consent obtained by fraud not an excuse, &c.

128. Where any person is charged with rape or indecent assault on a female or any of the offences set out in paras. 120 to 125, such person and the husband or wife of such person are competent but not compellable witnesses. Evidence of husband or wife in cases of rape, &c.

129. If two or more persons agree to try to induce a woman to commit adultery or fornication, or to take any woman from the lawful custody of her parents in order to marry her to any person without the parents' consent, each of them is guilty of the misdemeanor of conspiracy (a). Conspiracy to defile.

130. Procuring abortion is another serious offence ; thus— Procuring abortion.

If a woman *who is with child* unlawfully takes any poison or other noxious thing or uses any instrument or other means whatever, with intent to procure her own miscarriage, or

If any person intending to procure the miscarriage of some woman, whether *she is or is not actually with child*, unlawfully causes her to take any poison or other noxious thing or uses any instrument or other means whatever with that intent ;

this is in either case a felony, and punishable with penal servitude for life : of course if the treatment was rendered necessary by the state of the woman's health, and employed according to the usual practice of medicine it would not be unlawful.

131. The mere unlawful supplying or procuring any poison or other noxious thing or any instrument with the intention that the same shall be unlawfully used to procure the miscarriage of a woman is a misdemeanor, and punishable with five years' penal servitude, and this, whether or not the woman is actually with child, and whether or not she ever intended to use the articles for Supplying drugs, &c., with intent to procure miscarriage.

(a) As to the punishment, see para. 19; the imprisonment may be with hard labour.

Ch. VII. the purpose of procuring a miscarriage, if the person supplying or procuring them intended that they should be so used.

Conceal-
ment of
birth.

132. The offence of concealment of birth may also be conveniently mentioned here. This offence is committed by any person who endeavours to conceal the birth of a child of which a woman has been delivered, by a secret disposition of its dead body, and it is equally an offence whether the child died before, during, or after birth; the offence is a misdemeanor, and is punishable with two years' imprisonment. It must be proved that a child (which does not include a foetus that has not reached the period at which it might have been born alive) was born, and that the accused secretly disposed of the dead body, that is to say, buried it, or placed it in some place where it was not likely to be found, except by accident or upon search, and that this was done with the intention of concealing the birth, which intent may be gathered from the nature of the act itself, or from other evidence.

Bigamy.

133. Bigamy is committed by any person who being already married to one person, goes through the form of marriage with another; or who goes through the form of marriage with another person, though knowing that such last-mentioned person is already married to some one else. This offence is a felony, and punishable with penal servitude for seven years. It is no excuse that a person had good grounds for believing his or her wife or husband was dead, if such wife or husband was *in fact* alive at the time of the second marriage: subject to the exception that where the wife or husband of any person has been absent from such person for seven years immediately preceding the second marriage, such person cannot be convicted of bigamy, unless it is shown affirmatively that he or she knew that his or her wife or husband was alive at some time during those seven years. A person who is not a subject of Her Majesty cannot be convicted of bigamy under the English law, for having married a second wife in any place not in England or Ireland; nor of course can a person be convicted of bigamy where the first marriage was properly dissolved before the second took place.

Illegal
marriage.

134. It may be added that any illegal solemnization of matrimony according to the rites of the Church of England, either in an unlawful place, or at an unlawful time, or without either a proper publication of banns, or a licence, or by a person who falsely pretends that he is in holy orders, is a felony, and punishable with fourteen years' penal servitude.

Sodomy.

135. Sodomy is where any male has carnal knowledge

(a) of an animal (b), or has carnal knowledge of a human being "per anum;" this offence is a felony, and punishable with penal servitude for life, ten years' penal servitude being the minimum punishment which may be given. Any person above the age of fourteen years who permits himself or herself to be carnally known in this manner is considered a principal offender, and punishable accordingly. An attempt to commit sodomy is a misdemeanor, and punishable with ten years' penal servitude.

136. It is a misdemeanor punishable with two years' imprisonment for any male person, *either in public or private*, to commit or be a party to the commission of any act of gross indecency with another male person, or to procure or to attempt to procure the commission by any male person of any such act; and it is also a misdemeanor (c) to do any grossly indecent act in a public place in the presence of more persons than one, or to publicly expose the person, or exhibit any disgusting object. It is also a misdemeanor to publicly sell or expose for sale or view any obscene book, print, picture, or other indecent exhibition.

Acts of
indecency.

137. The keeping of any disorderly house, whether—

Disorderly
houses.

- (a.) A common brothel, *i.e.*, a house or part of a house kept for purposes of prostitution, whether or not any indecent or disorderly conduct is perceptible from the outside; or
- (b.) A common gaming house, *i.e.*, a house used for playing at any game into which chance enters, and where either a bank is kept, or the chances of the game are not equally favourable to all those engaged in it; or
- (c.) A common betting-house, *i.e.*, practically a house kept for the purpose of enabling persons to come and make bets with the manager of it,

is also a misdemeanor (c); and by a recent statute any person who

- (d.) Keeps or manages or assists in the management of a brothel; or
- (e.) Being a tenant or occupier of any premises knowingly permits any part of them to be used as a brothel; or
- (f.) Being the landlord of any premises or the agent for the landlord lets any part of them with the knowledge that any part of them is to be used as a brothel, or is wilfully a party to the continued use of any part of them as a brothel,

(a) The evidence required to establish the fact of carnal knowledge is the same as in cases of rape, see para. 116.

(b) A bird is not considered an animal for the purpose of this offence.

(c) As to the punishment, see para. 19.

Ch. VII. is liable on a first conviction to a fine of £20 or three months' imprisonment; and on a second or subsequent conviction to a fine of £40, or four months' imprisonment, in the discretion of the court.

Various other offences of a similar character do not require notice.

Abduction
of child
with intent
to steal.

138. Another very serious offence is the stealing of a child, either with the intention of depriving the person who has lawful charge of such child of the possession of it, or with the intention of stealing any article which such child has upon it. Thus if a person with either of the intentions aforementioned, unlawfully, whether by force or fraud, takes, or decoys away, or detains any child under the age of fourteen years, or receives or harbours any such child, knowing that it has been so dealt with, such person is guilty of felony, and punishable with seven years' penal servitude. Of course this does not extend to cases where the alleged offender claims to have a right to the possession of the child, or to cases where the child is illegitimate, and the alleged offender is the mother or father of the child.

Neglect of
children,
&c.

139. The neglect of children, servants, and apprentices by those who are bound to provide for them is in many cases a punishable offence. By the common law every parent, master, or mistress is bound, if able to do so, to provide a child of tender years with sufficient food, clothes, bedding and other necessities, and if the duty is neglected, and the child, being unable to obtain them for itself, suffers injury to its health in consequence, this is a misdemeanor (a).

And it is now further provided by statute that—

If any parent wilfully neglects to provide adequate food, clothing, medical aid, and lodging for any of his children under the age of fourteen years who are in his custody, so that the health of the child has been or is likely to be seriously injured, he is guilty of a misdemeanor, and punishable with six months' imprisonment.

And again, if any person legally liable as a master or mistress to provide necessary food, clothing, or lodging for any apprentice or servant, wilfully and without lawful excuse refuses or neglects to do so, so that the life of such apprentice or servant is endangered, or his health has been or is likely to be permanently injured, he is guilty of a misdemeanor, and punishable with five years' penal servitude.

It will be observed that in this last case there is no

(a) As to the punishment, see para. 19.

limit as to the age of the apprentice or servant, and the provision is undoubtedly an extremely wide one. **Ch. VII.**

140. By statute, also, if any person whatever abandons or exposes any child under the age of two, so that its life is endangered, or its health has been, or is likely to be, permanently injured, he is guilty of a misdemeanor, and punishable with five years' penal servitude. **Abandonment of children under two.**

141. The cases where an injury to a person's reputation may become a criminal offence are limited to those where the injury is effected by the publication of a libel. A libel may consist in anything which in itself, or from what is written or marked on it, tends either directly or by irony or insinuation, to expose any person to hatred, contempt, or ridicule; as, for instance, an article in a paper, or a caricature, or a gallows set up opposite a man's house; but mere spoken words, however defamatory, cannot be a libel. **IV. LIBEL. Definition of libel.**

142. Every person is considered to publish a libel if, after having an opportunity of knowing its contents or meaning, he delivers or exhibits it, or communicates its purport to any person other than the person libelled. **Publication.**

143. Any body of persons may be the subject of a libel, if the body is so small and definite that its individual members are well known as such; for instance, a particular regiment might be the subject of a libel. **Libel on body of persons.**

144. An attack on the character of a dead person can only be an offence if it is calculated to throw discredit on living persons. **On dead person.**

145. The publication of a libel is a misdemeanor, and punishable by a fine, and also with imprisonment (but without hard labour) for two years, if the offender knew the libel to be false, and for one year if he did not, unless its publication can be justified on one of the following grounds:— **Punishment.**

- (1.) That the libel was true, and not only that, but that it was for the public benefit that it should be published; or **Justification.**
- (2.) That it was published *bonâ fide* in the discharge of a legal, moral, or social duty; as, for instance, in giving a servant's character. This justification, however, will be of no avail if it is shown that the accused did not honestly believe the libel to be true, or that he went further than was reasonably necessary for the discharge of the duty; or
- (3.) That it is the expression of a person's real opinion reasonably formed on the public conduct of another, or on any literary or artistic work or advertisement of goods brought by the author before the public; or
- (4.) That it is contained in or honestly, and without

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malice extracted from any Parliamentary paper, or contained in any fair report of a debate in Parliament ; or

- (5.) That it is published in the course of a judicial proceeding, or in the discharge of a military duty ; and it has been held that this justification will even extend to cases where the libel is published with the express purpose of injuring the person libelled, by one who knows that it is utterly untrue (a) ; or
- (6.) That it is published in any fair report of the actual proceedings of a court of justice ; but this will not extend to remarks made by the reporter himself on the proceedings, or to a report of observations made by persons who are not entitled to take part in the proceedings (b).

Extortion
by threats
of libel.

146. If a person publishes or threatens to publish a libel with intent—

- (a.) To extort anything of value from any person, or
- (b.) To obtain an appointment of profit or trust for any person from any other person,

this is a misdemeanor, and punishable with three years' imprisonment. It is also a misdemeanor, and punishable in the same way, to propose to abstain from or to prevent the printing or publication of any matter, whether libellous or not, with either of the above intents.

(iii.) *Offences against Rights of Property (c).*

Classifica-
tion of
offences
against
property.

147. The criminal offences to be dealt with under this heading consist either in—I. Wrongful appropriation of property ; or II. Acts calculated to defraud ; or III. Malicious injury of property ; and they may be conveniently considered according to this classification.

I. WRONG-
FUL APPRO-
PRIATION
OF PRO-
PERTY.

148. The first offence of this description to be dealt with is that of larceny or theft, as some knowledge of the rules of law affecting this offence is necessary before the rules affecting other offences of the same class can be appreciated.

Definition
of theft.

149. Theft may be said to consist either—

- (1.) In the wrongful taking and carrying away of anything which is capable of being stolen ; or
- (2.) In a few cases in the wrongful conversion of something which is capable of being stolen, and which is already in the possession of the offender,

(a) See Chapter VIII, para. 75.

(b) Special provisions are also made with respect to newspapers by the Newspaper Libel and Registration Act, 1881. (44 & 45 Vict., c. 60.)

(c) The principal statute relating to these offences is the 24 & 25 Vict., c. 97.

to his own use, or the use of any person other than the owner (a);

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with the intention in either case—

- (a) Of permanently depriving the owner thereof of his property therein; or
- (b) Of permanently depriving any person who has a special property or interest in the thing (and who may, therefore, be perhaps conveniently termed a special owner) of such property or interest.

Of course it is essential that the person doing such an act does it wrongfully, and not under an idea that he has a right to act in the way that he does act; otherwise (as, for instance, if a person takes from another what he believes to be his own property) the act will not be theft.

150. Next, as to the things which are capable of being stolen. Generally speaking any moveable property which is valuable to its owner may be the subject of theft, though things of no value cannot. This rule is, however, subject to some few exceptions which require a brief consideration. By the common law, the exceptions were much more numerous and depended on certain broad principles, but these principles have now been so narrowed down by statute that in many cases little of them is left but the name, and the few instances where the principle is still enforced appear mere arbitrary exceptions.

Things capable of being stolen.

151. The first exception to be noticed is a general one, and applicable in all cases, viz., that if an owner abandons anything, the taking of it will not amount to theft; thus, if an owner throws any goods away as worthless, and a person finds them and takes them, this is no theft.

Exceptions. Things abandoned by owner.

152. The remaining exceptions are not so generally applicable, but have reference to particular things or classes of things. Thus, land cannot be stolen either by the removal of landmarks, or by building or encroaching on a neighbour's land, nor in any similar way. By the common law, too, things closely connected with the land could not be stolen, and under this principle anything which is built upon or permanently attached to or which forms part of the soil cannot even now, with a few exceptions (b), be stolen, though it may be if it has previously been severed from the soil by some independent transaction. Thus, if a

Land, and things attached to land.

(a) For the sake of avoiding repetition, the expression "conversion to his own use," or any similar expression when used in this chapter, will be deemed to include conversion to the use of any person other than the owner.

(b) As to these, see Steph. Dig. Crim. Law, p. 201.

Ch. VII. person pulls down a wall and carries away the stones this is not theft ; though if the owner had pulled down the wall and put the stones in a heap, a person might commit theft by taking stones from the heap.

Title deeds. **153.** By the common law, also, documents of title relating to land, as well as certain documents which derive their value merely from their being evidence of a right of action, such as bills of exchange (*a*), could not be the subject of theft ; such documents may, however, nearly all be now under express enactments the subject of theft.

Wild animals. **154.** Speaking generally, animals can only be stolen, at common law, if they are either tame animals (whether originally wild or not), or birds, bees, or silkworms kept for food, labour, or profit ; or if they are wild animals kept in a state of captivity for food or profit, but not if they are kept merely for pleasure or curiosity ; subject to this qualification, that base animals, such as dogs, ferrets, &c., could not be the subject of theft, even though they came within the above definition. By statute, however, any animals which are ordinarily kept in a state of confinement or for any domestic purposes can now be stolen, and this whether they are base animals or not : in fact, dogs are the subject of special statutory provisions (*b*).

Animals which have escaped from confinement. **155.** Animals which have escaped from confinement and are in the enjoyment of their natural liberty cannot be stolen ; but this does not apply to animals which are allowed to wander about, and which are known to be tame by the person taking them ; thus the taking of tame pigeons which are allowed to fly about the country by a person who knew that they were tame would probably in most cases amount to theft.

Killing with intent to steal carcasses, &c. **156.** If a person kills an animal (the stealing of which would be felony) with the intention of stealing its carcase, skin, plumage, or any part of it, he is considered to steal the animal.

Game. **157.** Game, while in the enjoyment of its natural liberty, cannot be stolen, though the unauthorised pursuit of or killing game is in many cases an offence.

Owner of property. **158.** The next question to be considered is—who is deemed to be the owner of, or to have any special property or interest in a thing. The real owner of a thing hardly seems to require definition, but it may be noticed that a person does not cease to be the owner of a thing merely because he temporarily loses control over it (for instance, if a person drops his watch into a river, the watch will still remain his until he intentionally abandons it), and

(*a*) This, of course, does not include documents of title to goods, &c., and tokens representing them, such as pawn-tickets.

(*b*) 24 & 25 Vict., c. 96, ss. 18-20.

that a person may become the owner of a thing, though he knows nothing about it—for instance, if a piece of old iron is dropped into a canal, and abandoned by its real owner, it becomes the property of the canal owner, and a person fishing it up, and appropriating it without his authority, is guilty of theft from him. Ch. VII.

159. Where things are owned by a corporation, a partnership, or several joint owners, these bodies are considered to be the real owners; and individual members of such bodies, though in one sense owners, are not considered the real owners, so that an individual member may be guilty of stealing property belonging to the body. Ownership by corporation, &c.

160. A person may become the "special owner" of an article in a variety of ways. Of these the commonest, probably, is where the real owner entrusts a thing to a person for a special purpose; as in cases of bailment, that is to say, where an owner delivers a thing to another, either in order that he may use it, or that he may keep it in safety, or may keep it as a pledge, or that he may carry it, or do some work upon it, and then re-deliver it according to the directions of the owner. In these cases the owner is called the bailor, and the person to whom the thing bailed is delivered is called the bailee. Special owner.

161. A bailment, however, will not take place unless the bailor intends that the bailee shall re-deliver the thing actually bailed. It is not sufficient if the bailee is merely to deliver an equivalent. For instance, if a sum of money were handed over with the intention that an equal sum, but not the same specific coins, should be re-delivered, this would be no bailment. On the other hand, the fact that the thing bailed is to be re-delivered in a different form (as where cloth is sent to a tailor to be made up into a coat) will not prevent there being a bailment. Bailment.

162. In cases where there is a special owner in addition to the real owner of any article, the real owner may commit theft with regard to his own property, if he intentionally and wrongfully deprives the special owner of it; and similarly the special owner may commit theft with regard to it, if he converts it to the use of anyone but the real owner, with the intention of depriving such owner permanently thereof. Theft by real as against special owner, and vice versa.

163. In addition to the cases where there is an actual bailment, a person may acquire a special property or interest in a thing in many ways. In fact, as against all but the real owner, any person (except in some cases a wife or servant) has a special property or interest in everything of which he has possession, as, for instance, of a thing which he finds in the street; and this rule will hold good, even though he has got possession of the thing unlawfully. Thus, if a man steals a woman's watch, and a

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Ch. VII. boy picks the man's pocket of the watch, this is theft in the boy from the man, as the man had a special property in it as against him.

Cases where possession gives no special property.

164. This rule must be taken, however, subject to this reservation, that if a person is unwittingly in possession of a thing which it would be his duty to restore to its proper owner if he became conscious of possessing it, he is not considered to have any special property or interest in it. For instance, if a man buys a bureau at a sale, and in a secret drawer of this bureau there is a large sum of money belonging to a previous owner, of which neither the seller nor the buyer at the sale knows anything, the buyer does not acquire any special property or interest in the money by the mere possession of the bureau, because it is his duty to hand the money when discovered over to its real owner. At the same time, if he once finds and appropriates the money, he then acquires a special property or interest in it, even though he be criminally liable for the appropriation.

Possession by wife.

165. Possession by wives and servants come under somewhat different rules. Thus, possession of a thing by a wife is *prima facie* at least considered to be possession by the husband, and to give him, not her, the special property therein.

Possession by servant.

166. Possession by a servant of anything on behalf of his master is considered to be the possession of the master or the possession of the servant according to the circumstances under which the servant originally received it. If, for instance, a servant receives anything from his master, or from a fellow servant who has received it from his master, then, unless the master intends to pass the property in it to him, the servant will have no real possession of the thing, and the possession will remain in the master. If, however, a servant receives anything from a third person on his master's account, then the servant will have possession of the thing, and the master will have no possession until the servant puts the thing into some place or thing belonging to his master, or does some other act of the same character by which the possession is transferred from the servant to the master. For instance, if a servant takes his master's cart to fetch some coals, while he is carrying a sack of coals to the cart the coals are in his possession, but the moment he puts them in the cart they are no longer in his possession, but in his master's. The same rule will hold if a servant receives a thing from a fellow-servant, who has himself received it from a third person on his master's account, but has done no act to put the thing in his master's possession.

Distinction in cases of

167. The distinction between the cases where possession by the servant of anything is possession by the master,

and where such possession is possession by the servant himself, must be carefully attended to, as in the former cases the master is the person who is considered to own or have a special property or interest in the thing, whereas, in the latter cases, the servant is considered to have a special property or interest in the thing, and the master is not considered to have acquired any such ownership or special property or interest in the thing as will entitle him to found a charge of theft against the servant if the latter converts the thing to his own use; though such a conversion may amount to embezzlement, as will be hereafter pointed out.

Ch. VII.

possession
by servant.

168. The old law was that the husband could not steal from his wife, nor the wife from her husband, and this is still the law while they are living together; but under the Married Women's Property Act, 1882 (*a*), it is no longer the law as regards England and Ireland when they are living apart.

Husband
and wife.

If either husband or wife takes the property of the other when deserting or about to desert the other, it will be theft, and a third person who assists in such taking is also guilty of theft. A third person assisting a husband and wife in taking any goods which it is not theft for the husband or wife to take, is not guilty of theft.

When any criminal proceedings are taken against a husband or wife in respect of property taken from a wife or husband, the wife or husband is a competent and compellable witness.

169. In all cases of theft the intention of the offender is a material part of the offence, and this intention must involve a permanent, not a temporary, deprivation of the thing stolen. For instance, if a person takes another's horse without his leave, rides him thirty miles, and then leaves him at an inn, saying he will call again for him, and afterwards continues his way on foot, the question to be decided is whether the offender intended to deprive the owner permanently of his horse, or merely to make that particular journey on him. In the first case the offence is theft; in the second case it is not. Of course the intention meant is the intention of the offender at the time of the offence as if he then intended to commit theft, a subsequent repentance and bringing back of the property is no excuse.

Intention
of thief.

170. The taking and carrying away of a thing consists in the moving it wholly or partially from the place it originally occupied, in such a manner that the person moving it has for the moment complete control over it. Thus, if a person draws a sword half out of its scabbard,

Taking and
carrying
away.

Ch. VII. or moves a parcel from one end of a waggon to another, or snatches an earring out of a lady's ear, which is once detached, though it afterwards falls into and remains in her hair, or if a postman takes a letter out of his pouch and puts it into his pocket, contrary to his duty, this is in each case a taking and carrying away. But if a person attempts to carry away an article fastened by a string, and is stopped when he gets to the end of the string, this is not a taking and carrying away, because he never has complete control over the article.

Of thing
already in
possession.

171. A person cannot commit theft by taking and carrying away a thing which is already in his possession; but this rule does not extend to cases where a servant steals his master's things which are in his possession, if such possession is the possession of the master, and not his own; nor does it apply to cases where a person has merely a limited possession of the thing for a temporary purpose, as, for instance, if a guest at a tavern steals the tankard placed for him to drink from.

Knowledge
of owner no
excuse.

172. It is no defence to a charge of theft to say that the owner knew the offence was going to be committed, and facilitated its commission. Thus, if a thief incites a servant to steal money from his master's desk, and the servant informs his master, and thereupon the master tells his servant to go on with the business, and gives the two an opportunity to break open the desk and take the money, the thief is still guilty of stealing.

Cases where
possession
obtained by
fraud.

173. Again, it is no defence to a charge of theft to say that the offender had full permission from the owner to take and carry the thing away, if the offender obtained such permission by fraud, with the intention of wrongfully converting the thing to his own use; and also (which is very important) if the person giving the permission merely intended to give the offender a right to the *possession* of the goods, and not to transfer the *property* in them to him. Thus, if a person persuades a shopkeeper to let him take two silver ewers to show his master (who does not really exist), in order that the master may choose one, and the offender takes them away intending to sell them for his own profit, this is theft. Similarly, if a person obtains goods from a carrier, to whom they were entrusted, by falsely pretending that he is the consignee, this is theft, as the carrier only transferred the possession, not the property. On the other hand, if a man obtains goods from a dealer by fraudulently pretending to give him diamonds for them, this may or may not be an obtaining of goods by false pretences, but it is not theft, as the shopkeeper means to transfer the *property* in the goods.

Transfer of

174. Again, it is no defence to say that the thing taken

was actually given to the offender, if such gift be made under a mistake, of which the offender knows and fraudulently takes advantage, even though he did not cause the mistake. Thus, if a man gives a sovereign to a cabman instead of a shilling, and the cabman, knowing it to be a mistake, keeps it, and says nothing about it, this is theft. On the other hand, it is doubtful whether it is theft if the offender does not find out the mistake till afterwards, even though he then determines to take advantage of the mistake. For example, if the cabman did not find out that the fare given him was a sovereign until he got home, it is doubtful whether it would be theft, if he then determined to keep it.

Ch. VII.

property by mistake.

175. It will now be convenient to consider the cases in which conversion may amount to theft. By the common law, the rule is absolute that, if a person gets possession of anything *innocently*, a subsequent conversion of it to his own use will not be a criminal offence, even though his possession may merely have been intended to be that of a trustee. He must, however, to bring himself within this rule, have obtained possession innocently in the first instance. Thus, if a finder of lost goods converts them to his own use, this will be theft, or not, according to the knowledge and intention of the finder when he takes possession of the goods. If the finder at that time knows or has reasonable grounds to believe, that he can find out who the owner is, and notwithstanding determines at that time to convert them to his own use, this is theft; but if he has not this knowledge and intention *at that time*, the original taking possession is considered to be innocent, and no subsequent conversion by the finder can be theft, whatever his knowledge or intention may then be.

Conversion of thing obtained innocently to use of person obtaining it.

176. For instance, if a person sees a woman drop a sovereign in the road, and picks it up, intending to keep it, this is theft; but if he knows the woman, and picks it up, intending to return it to her when he next meets her, but afterwards determines to keep it, this is not theft. Again, if he merely finds the sovereign in the road, without seeing or knowing how to find out who dropped it, but afterwards sees a woman looking for the sovereign, and believes her to be the owner, and still says nothing of his having found it, this is not theft; because in both these cases the original taking is considered to have been innocent.

Illustrations.

177. If, however, a person obtains possession of the thing converted in any way which would give the owner a right of action against him in respect thereof, he is not considered to obtain such possession innocently; as, for instance, if the offender acquires such possession through

Of thing not obtainable innocently.

Ch. VII. gross carelessness, even though at that time he has no intention of converting the thing taken. Thus, if a person takes another man's umbrella away with him from his club through his own carelessness, and afterwards, when he finds out the mistake, fraudulently converts it to his own use, this is theft.

Conversion by bailee. 178. This common law rule has, however, now been modified by statute in the case of certain classes of persons. Thus, fraudulent conversion by a bailee (a) to his own use is now made theft in all but some few special cases where the offence is punishable on summary conviction. In other cases the rule has been modified by making such conversion a criminal offence, closely resembling theft, but called by some different name. These cases will require consideration in detail.

How ownership of goods to be laid in charge. 179. Before, however, leaving the subject of actual theft, it may be well to notice that, on a charge of theft, the thing stolen may be laid as the property of the owner, or of any other person who has a special property or interest in it, as may best suit the particular case.

Proof of theft. 180. It should also be noticed that it is not absolutely necessary on a charge of theft that the thing stolen should be produced and identified; for instance, if a man went to the London Docks sober, and with no means of getting drunk, and then entered a cellar, where there were a million gallons of wine, and came out again very drunk, it might reasonably be presumed that he had stolen some wine, though it might be impossible to prove directly that any wine was gone. There are other cases where the facts will warrant a conviction for theft, though no one saw the accused commit it; perhaps the most common of these is where a person is found in possession of stolen goods and can give no satisfactory account of them. The question whether or not, in any particular case, such possession is really suspicious must depend on the circumstances of that case; for instance, if one of several stolen coins was found in the till of a shopkeeper doing a large business an hour after the theft, this would prove nothing; but if a lost will was found ten years after the loss, locked up in the strong box of a person deeply interested in its temporary concealment, and very jealous of his strong box, this would prove a great deal.

Punishment of theft. 181. As a rule theft is a felony, and punishable with five years' penal servitude; or if the offence be committed after a previous conviction for felony, with ten years; or if after conviction for certain misdemeanors, with seven years' penal servitude. In some few cases, principally where the thing stolen could not have been the subject of theft at

(a) For definition of bailee, see paras. 160-1.

common law (a), the offence is only a misdemeanor, and punishable with imprisonment; or it may even be punishable only with a fine. In other cases, of which the principal are theft from the person: theft by a clerk or servant from his master, or by a person in the public service of public stores or moneys; theft from a vessel or docks; theft of cattle; theft of post letters, &c.; the punishments which may be given are very severe, extending even in some cases to penal servitude for life. These will all be found set out in minute detail in the ordinary works on criminal law.

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182. It has been already observed that there are numerous cases where the common law rule as to conversion has been modified by making such conversion a criminal offence which has received some distinct name. One case of this description is where a clerk or servant fraudulently converts to his own use the property of his master of which he has possession under circumstances which constitute such possession his own possession, and not that of his master (b); this is now a criminal offence and called *embezzlement*. Of course, if the possession were the possession of the master it would be ordinary theft, as already pointed out.

Embezzlement, or conversion by clerk or servant.

183. By "a clerk or servant" is meant a person who is bound to obey the orders and submit to the control of his master in the performance of his duties. A person may become such a clerk or servant if he simply acts as one, although there is no express contract of service; and this even though the particular occasion on which the offence is committed was the only occasion on which he has ever so acted. For instance, if a drover is employed by a farmer on a single occasion to drive a cow to a purchaser and bring back the money, the drover on this occasion is the servant of the farmer. It is no excuse for a person to say that he was not appointed to his office by the owner of the property. Thus, if a collector of rates, who has to obey the orders of a committee of management, embezzles their funds, it is no excuse for him to say that the committee did not appoint him, but that he was elected by the vestry. Nor is it an excuse for the offender to say that the property belonged to a partnership of which he was himself a member, if, as a matter of fact, he was acting as a clerk or servant to the partnership and bound to obey their orders.

Definition of clerk or servant.

184. On the other hand, a person will not become a clerk or servant merely because he undertakes to do business for another as his agent, though he has a salary for

Agents not clerks or servants.

(a) As to these, see para. 150 *et seq.*

(b) See para. 166.

Ch. VII. doing so, and even though he does no other business and has to account for all money he receives, if he is not bound to obey the orders of his principal. Thus, a traveller for a firm paid by commission and employed to solicit orders when and where he thinks convenient, is not a clerk or servant, even though he is not allowed to work for any other firm.

Nor secretary of unlawful society. 185. A person is also not recognised as a clerk or servant if the objects of his service are criminal, as where a person is secretary to a society all of whose members have to take an unlawful oath for which they would be criminally responsible.

Punishment. 186. Embezzlement by a clerk or servant is felony, and punishable with fourteen years' penal servitude.

Embezzlement by persons in public service. 187. A somewhat similar offence is where a person who is employed in the public service of Her Majesty or in the police fraudulently converts any chattel, money, or security of which he has the control by virtue of such appointment, to any purpose other than the public service. This is also a felony, and punishable with fourteen years' penal servitude (a).

Proof of embezzlement. 188. On a charge of embezzlement the fraudulent conversion of the thing charged to be embezzled may be inferred either from the fact that the accused person has not handed it over or accounted for it in the ordinary course, or from the fact of his having falsely accounted for it, or from the fact that on an examination of his accounts there is a general deficiency for which he is unable to account, or from the fact of his having absconded, or in any similar way.

Conviction for theft on charge of embezzlement and vice versa. 189. If, on a charge of embezzlement, it turns out that the crime is in fact theft and not embezzlement, or if on a charge of theft it appears that the crime is really embezzlement, the accused is not entitled to be acquitted, but may be convicted of the alternative offence on the charge which has been preferred. As a natural sequence to this provision, if a person is once acquitted of embezzlement or theft, he cannot be afterwards charged with the alternative offence of theft or embezzlement on the same facts (b).

Fraudulent conversion by bankers, &c. 190. Special provisions not requiring particular mention here have also been made with regard to fraudulent conversion by bankers, brokers, solicitors, trustees, directors of companies, &c.

False pretences. 191. The next offence to be noticed differs actually but little from ordinary theft, but differs from it technically in

(a) There are other special statutes dealing with cases of embezzlement by particular persons, as, for instance, post-office officials, custom-house officers, &c., but it is unnecessary to mention them here in detail.

(b) 24 & 25 Vict., c. 96, s. 72.

an important particular. This is the obtaining of money, goods, &c., by false pretences, with intent to defraud. As has already been pointed out, the conversion by a person to his own use of an article of which possession has been wrongfully obtained may in some cases be theft, but cannot be so if the owner of the article intended to transfer the actual property in the article to the offender, and not to give him merely the possession of it (a). It, therefore, became necessary to create the special offence now under consideration to meet the cases where an owner is induced by fraud to transfer the actual property in an article to an offender; and accordingly it has been made a misdemeanor punishable with five years' penal servitude to obtain any chattel, money, or valuable security from any person by any false pretence with intent to defraud.

192. The false pretence may be made in any way, either by words, by writing, or by conduct; for instance, if a person not being an officer in the army represents himself to be so by wearing an officer's uniform and thus obtains goods from a tradesman; this is a false pretence by conduct. The pretence, however, must involve a false representation, express or implied, as to the past or present existence of some fact; a mere promise as to future conduct not involving such a representation will not be sufficient. Thus, if a person merely gives a cheque in exchange for goods, this is considered to be a representation that he has authority to draw upon the bank for the amount, and that the cheque is a good and valid order for the payment of money, and if he knows that this is not so, it is a legal false pretence; on the other hand, if when he gives the cheque he says that he has no funds in the bank at the moment, but that he will have 1,000*l.* due to him paid in to his credit by the Government the next day, and that the cheque will be honoured if presented after that date, this will not be a legal false pretence, however untrue it may be, as it relates simply to the future.

What amounts to a pretence.

193. Considerable latitude is allowed in cases of buying and selling, and mere language of puffery or depreciation is not considered to amount to a false pretence, unless it involves a definite false assertion as to some matter of fact which is capable of being positively determined. Thus, if a person endeavouring to sell some electro-plate spoons states that they are of the best quality, equal to Elkington's A, and so forth, but avoids any definite statement of the amount of silver in them, this will not be a legal false pretence; but if he states distinctly that they contain some definite quantity of silver, which he knows that they do not contain, this will be a legal false pretence.

Mere puffery in selling not a false pretence.

(a) See para. 173.

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Impossibility of alleged fact no excuse.

194. It is no excuse to say that a person of common prudence could easily have found out that the pretence was untrue, nor to say that the existence of the alleged fact was impossible ; for instance, if a person represents himself as a wizard having supernatural powers, and states that certain stuff which he offers for sale is a potent charm, this is a legal false pretence, if believed by the person to whom it is made.

Immaterial that article is not directly obtained.

195. It is immaterial whether any article is obtained directly by means of a false pretence, or whether the effect of the false pretence is to induce the making of a contract (of sale or otherwise) under which such article is obtained, if such article is really obtained on the credit of the false pretence ; thus, if a cheesemonger were to put a taster of good quality into an inferior cheese, and to induce a customer to buy the cheese by letting him taste this taster, the cheesemonger would be held to obtain the price of the cheese by a false pretence.

There must be intent to obtain permanently.

196. The obtaining must involve an intention to deprive the owner permanently and entirely of the thing obtained : for instance, if a person by a false pretence induces a livery stable keeper to let him have a horse for the day, for which he would naturally have been charged a certain sum for hire, and afterwards returns the horse, this is not a sufficient obtaining to constitute the offence, though the offender intended to get the use of the horse for nothing. It is not necessary that the maker of the false pretence should obtain the article for his own benefit ; it is quite sufficient if he obtains its delivery to any third person, for the benefit of such third person, or of any one else.

Article must be obtained by the pretence.

197. It must, however, be clearly shown that the article was obtained *by* the false pretence, *i.e.*, that it would not have been obtained but for such pretence, though it is, of course, not necessary that the pretence should be the only inducement which operated on the mind of the person from whom it was obtained. For instance, if a man induces a woman to give him money by falsely pretending that he is unmarried and that he will marry her, he may be convicted upon the false pretence as to his being unmarried, which is a false representation as to an existing fact, though it was coupled with the other statement which is not a legal false pretence. A thing is not deemed to be obtained *by* a false pretence from a person who is not deceived by the pretence, but knows it to be false.

Obtaining articles to be made.

198. The article obtained need not be in existence at the time when the pretence is made ; thus, it would be sufficient if a person ordered an article and got it made and delivered by falsely pretending that he was agent to a company which required the article.

Article must

199. A thing cannot, however, be the subject of this

offence unless it could have been the subject of theft at common law; thus it is not an offence to obtain a dog by false pretences, as a dog could not be stolen at common law; (a) though by statute it may now be the subject of theft.

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be subject of theft at common law.

200. If a person obtains an article by false pretences, the fact that he intended to make compensation for the fraud, if he should ever be in the position to do so, as for instance, by paying the price of the article or otherwise, will be no excuse, and will not prevent the presumption that he intended to defraud. It is not necessary to prove an intent to defraud any particular person.

Intention.

201. If a person is charged with obtaining anything by false pretences, and the offence turns out to be really theft, the prisoner may be convicted *on that charge* of the theft: and therefore if a person had once been acquitted of obtaining anything by false pretences, he cannot afterwards be charged with stealing on the same facts. A person cannot, however, be convicted of obtaining goods by false pretences on a charge of theft, and he may therefore be charged with obtaining the thing by false pretences on the same facts on which he may have been acquitted when charged with theft.

Conviction for theft on charge of false pretences.

202. It may be added that if a person cheats at cards, dice, or any other game, and thereby wins any money or thing for himself or any other person who is sharing in the stakes, or betting on the game, this is considered to be an obtaining by false pretences with intent to defraud.

Cheating at games.

203. A very similar offence to that last dealt with is where a person by a false pretence, and with the intention of injuring or defrauding some other person, fraudulently causes or induces that person or any other person to execute a valuable security, such as a bill of exchange, promissory note, cheque, or other similar instrument; or to write, impress, or affix his own or any other person's name on any paper or parchment, in order that the same may be afterwards converted into or dealt with as a valuable security. This offence is also a misdemeanor, and punishable with five years' penal servitude, and the remarks above made as to what constitutes a legal false pretence will equally apply here.

Obtaining execution of document, &c., by false pretences.

204. There are several other kinds of fraud which are criminally punishable, such as cheating, frauds by bankrupts, &c., of which the following may be shortly noticed.

Other kinds of fraud.

205. Cheating consists in fraudulently obtaining the property of another, by any deceitful practice, which directly affects or may affect the public at large, but which

Cheating.

(a) As to what can be the subject of theft at common law, see para. 150, *et seq.*

Ch. VII. does not amount to felony: merely deceiving an individual is, however, not sufficient. Thus selling short weight of bread to a private person without the use of false weights would not be cheating: but if false weights were used, it would be cheating, as the use of false weights affects the public. Cheating is a misdemeanor (a).

Conspiring to defraud. **206.** It is also a misdemeanor to conspire to defraud; as where two or more persons agree together to do any act with the intention of defrauding the public or any particular person or class of persons, or to extort any money or goods from any person; and this is so, though the act agreed upon is not in itself a crime; (b) as, for instance, if persons conspire to defraud the public by a mock auction; or to raise the price of the funds by false rumours; or to induce a person to buy horses by falsely alleging that they are the property of a private person and not of a horse-dealer.

Taking out marks from public stores, **207.** It is a felony punishable with seven years' penal servitude to take out, destroy, or obliterate any mark whatever denoting the property of Her Majesty in any stores which are under the control of a Secretary of State, or of the Admiralty, or of a public department, or of any person in Her Majesty's service, with the intention of concealing Her Majesty's property therein.

Robbery. **208.** If theft is accompanied by actual violence or by threats of injury to any person, or to his property or reputation, and such violence or threats are intentionally used for the purpose of extorting the thing stolen, or of preventing or overcoming resistance to its being stolen, this is robbery (c). Thus, if a man snatches at something worn by another, and they struggle for it, and the thief gets it, this is robbery. Even if no actual force or threat be used the offence may amount to robbery, if the taking be practically a taking by force, as, for instance, if three persons surround another in such a way as to make resistance useless and then take his watch. But violence or threats will not make the offence robbery, unless used with the intention above referred to. For instance, if a person snatch a bundle from another's hand and run away with it, this is only theft, as the violence used was merely to get possession of the bundle. All robbery is felony and punishable with fourteen years' penal servitude.

Robbery with violence. **209.** If actual violence to any person be used by the offender, either at the time of or before or after the robbery, or if the offender is armed with any offensive weapon or instrument, or is accompanied by any other

(a) As to the punishment, see para. 19.

(b) As to the punishment, see para. 19; the imprisonment may be with hard labour.

(c) See also as to garotting *supra*. para. 87.

person, the punishment may be increased to penal servitude for life, and three floggings. **Ch. VII.**

210. Any assault with intent to rob is a felony, and punishable with penal servitude for five years; and if the offender is accompanied by any other person, the punishment may be increased in this case also to penal servitude for life and three floggings. **Assault with intent to rob.**

211. Robbery, as above defined, by no means exhausts the cases in which force or threats may be used for purposes of extortion, and special statutory provision has therefore been made to meet some of the more serious cases of this kind. Thus, if any person demands anything which can be the subject of theft, with intent to steal it, and uses threats or violence to enforce such demand, he is guilty of felony and liable to five years' penal servitude whether the thing demanded is received or not. For instance, if a policeman says he will lock up a man for speaking to a prostitute unless he receives five shillings, he is liable under this provision, though he does not receive any money and has really no right to lock the man up. If such demands and threats are made in writing and without any reasonable cause, not only the sender of the writing, but any person who knows its contents, and in any way contributes to its being received by the person to whom it is sent, is guilty of felony and liable to penal servitude for life. **Extortion.**

212. Again, if an offender accuses or threatens to accuse any person of any crime punishable with death, or with penal servitude for seven years or more, or of any assault with intent to commit a rape, or of any attempt to commit a rape, or of any infamous crime, with the intention of extorting anything from any person whatever, this is a felony, and punishable with penal servitude for life. In this case also, if the accusation or threat is made in writing, any person who knows the contents of the writing, and in any way contributes to its being received by the person to whom it is sent, is equally guilty of felony and punishable in the same way as the principal offender. **By threats to accuse of crime.**

213. One other case of the kind remains to be noticed, namely, where a person uses violence or restraint, or threats of violence or restraint, or accuses or threatens to accuse another of treason or felony or any of the crimes enumerated in the last paragraph, in order to induce some person to execute, make, accept, endorse, alter, or destroy any valuable security, such, for instance, as a bill of exchange, promissory note, cheque, or other similar instrument; or to write, impress, or affix his name, or the name of any body, company, firm, or partnership, or the seal of any body corporate, company, or society, on or to **Procuring execution, &c., of valuable security by threats.**

Ch. VII. any paper or parchment in order that it may be afterwards converted into or used as a valuable security, and does this with the intention of injuring or defrauding somebody. This offence is also a felony, and punishable with penal servitude for life.

As to threats generally. **214.** In all the above cases where an offence is committed by the use of threats, it makes no difference whether the offender threatens that he will himself execute his threat, or that it will be executed by some other person. Extortion by threats of publication of a libel has been already noticed (a).

Theft from a dwelling-house. **215.** Theft from a dwelling-house, that is to say, any permanent building or separate part thereof, in which the owner, or the tenant or any member of the family habitually sleeps at night (b), requires separate notice.

In such a case—

if the value of the thing stolen is at least 5*l.*, or
if the thief frightens anyone in the dwelling-house
by the use of menaces or threats,

the offence is a felony, and punishable with fourteen years' penal servitude.

Entry of dwelling-houses. **216.** It will be convenient to notice here that class of cases which is connected with the entry of dwelling-houses, &c., and the commission of any felony therein, as they are more frequently concerned with the commission of theft than any other felony.

At night. **217.** The simplest case of the kind is where a person merely enters a dwelling-house *at night*, with the intention of committing some felony therein, but without any aggravating circumstances. This is a felony and punishable with seven years' penal servitude. "Night" in these cases means the interval between nine at night and six in the morning. The intention of the accused may, of course, be presumed from his conduct, as, for instance, from the actual commission of a felony.

Entry. **218.** A person is considered to enter a house as soon as he introduces into the house any part of his body, or any instrument held in his hand for the purpose of intimidating any one in the house, or of removing any goods; but he is not considered to effect an entry by the mere introduction into the house of some instrument for the purpose of breaking the house open.

Breaking and entering. **219.** The majority of these offences depend on there being a breaking as well as an entry of the house.

A person is considered technically to "break" a house—

(a) See para. 146.

(b) Outhouses, &c., are not considered to be part of a dwelling-house unless there is some communication between them and the dwelling-house, either immediately or by means of a covered or inclosed passage.

he actually breaks any part internal or external of the building itself, or
 if he opens by any means whatever (a) any closed door, window, shutter, cellar-flap, or other thing which is intended to cover openings to the house, or to give passage from one part of it to another, or if he gets down a chimney, or
 if he obtains entrance into the house by any threat or artifice used for that purpose, or by collusion with any person in the house.

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220. Offences involving breaking and entering are not confined to dwelling-houses. Thus it is a felony, punishable with seven years' penal servitude, to break and enter, whether by day or night, not only any dwelling-house, but any outbuilding which is included in the homestead (whether technically part of the dwelling-house or not) or any school-house, shop, warehouse, or counting-house, or any place of divine worship, with the intention of committing a felony therein.

Breaking and entering shops, &c.

221. On the other hand, if the building is a dwelling-house, and the breaking and entering is at night, the offence will become burglary, and punishable with penal servitude for life.

Burglary.

222. If a person, after breaking and entering any of the buildings above enumerated, actually commits a felony therein, then if the building is a place of divine worship, the offence is called "sacrilege," and is punishable with penal servitude for life: in other cases the offence is punishable with penal servitude for fourteen years.

Breaking and entering and committing felony in churches, &c.

223. A somewhat similar offence is where a person, being in or entering one of the buildings above enumerated, commits a felony therein and then breaks out of it. This is in itself a felony, and punishable as though the felony committed had been committed after a breaking and entry.

Breaking out.

224. If the building is a dwelling-house, therefore, and the breaking out is at night, the offence is a burglary, and punishable accordingly; and a breaking out of a dwelling-house at night will constitute a burglary, even where no felony has been committed, if the offender originally entered the house with the intention of committing a felony therein.

Burglary, by breaking out.

225. Even the preparation for offences of this character may be in itself an offence. Thus it is a misdemeanor, punishable with five years' penal servitude, for any person

Possession of house-breaking instruments, &c.

(a) This includes the lifting of a latch, or the raising of anything kept in its place by its own weight, but not the pushing up of a window already partly open, or similar acts.

CH. VII. to be found at night in possession of any picklock, key (*a*), crow, jack, bit, or other instrument of house-breaking, without being able to give a lawful excuse for such possession, or to be found armed with any offensive weapon with the intention of breaking into any building and committing a felony therein (*b*). It is also a misdemeanor, punishable in the same way, to be found by night with a blackened face, or disguised in any way, with the intention of committing any felony, or to be found by night in any building with the intention of committing a felony therein (*b*). If any person, convicted of any such misdemeanor as above-mentioned, has been previously convicted of any of those misdemeanors or of any felony, the punishment may be increased to ten years' penal servitude.

Receiving goods obtained by criminal offence. **226.** The receiving of goods obtained by means of a criminal offence, with knowledge that they have been so obtained, is in many cases itself an offence. But the goods must have been actually obtained by means of some criminal offence, and if after they were thus obtained in the first instance, they have been taken away from the criminal by some one who had a right to do so, and then handed back to him (in order to detect the receiver, or for any other reason), the goods are then not considered to have been obtained by means of the first offence, and a person receiving them is not criminally responsible for doing so. A person is considered to receive goods as soon as he obtains control over them.

By wife or servant. **227.** Receipt by a wife or servant of goods, with knowledge that they have been improperly obtained, will not make an absent husband or master responsible, nor will he become responsible, even though he hears all about it afterwards, and passively acquiesces; but he will become responsible as a receiver if, after learning the facts, he does any act approving the receipt of the goods. For instance, if a wife knowingly receives stolen goods in her husband's absence, and pays the thief 6*d.* on account, and on the husband's return the wife tells him all about it, and he thereupon pays the thief the balance of the price, the husband may be convicted as a receiver.

Punishment of receiving. **228.** The principal cases in which receiving is punishable are—

- (1.) Where a person receives a post letter, or post letter bag, or anything which he knows to have been sent by post, or intended to be so sent, and to have been stolen or embezzled. This is a felony, punishable with penal servitude for life.

(*a*) This includes a common key.

(*b*) As to proof of intention, see para. 217.

- (2.) Where a person receives anything which he knows to have been improperly obtained in any of the ways mentioned in this section of the chapter. In these cases, if the offence by which the thing was improperly obtained is itself a felony, the receiving of that thing will be also a felony, and punishable with fourteen years' penal servitude; but if the offence by which it was obtained is a misdemeanor, the receiving will be also a misdemeanor, and punishable with seven years' penal servitude. Ch. VII.

229. A very similar offence to that of receiving is where a person corruptly takes a reward, directly or indirectly, upon an undertaking that he will assist a person to recover any article improperly obtained from him in any of the ways mentioned in this section of the chapter, and does not use all due diligence to cause the offender to be brought to trial for his offence; this is a felony, and punishable with penal servitude for seven years. Corruptly taking a reward to recover stolen property.

230. The principal offences which come under the subdivision of "Acts calculated to defraud," are those relating to the coin (a), to forgery (b), and to personation. It is proposed to deal first with offences relating to the coin, a general outline of which will be sufficient. II. ACTS CALCULATED TO DEFRAUD.

231. The most severely punishable of these offences are those which affect the Queen's current coin, *i.e.*, coin coined in Her Majesty's Mints, or lawfully current in any part of Her Majesty's dominions. Coining.

232. The unlawful coining or counterfeiting current gold or silver coin, or even the possession of tools for such coining is a felony, and punishable with penal servitude for life; and the importation of counterfeit coin of this character, knowing it to be counterfeit, is an offence of the same degree, and punishable in the same way. Current gold and silver coin.

233. The uttering, *i.e.*, the passing or attempting to pass any counterfeit coin of this character, with knowledge that it is counterfeit, is a misdemeanor, and punishable with one year's imprisonment; but if the offender at the time of such uttering has any other such coin in his possession, or if he utters another such coin within ten days afterwards, exclusive of the day of uttering, he is punishable with two years' imprisonment instead of one. Uttering.

234. The mere possession of three or more such coins, with the intention of uttering any of them, is also a misdemeanour, and punishable with five years' penal servitude. Possession of three or more coins.

235. Any of the above misdemeanors will, however, become felony, and punishable with penal servitude for Previous conviction.

(a) The principal statute relating to coining is the 24 & 25 Vict., c. 99.

(b) The principal statute relating to forgery is the 24 & 25 Vict., c. 98.

(M.L.)

Ch. VII. life, if committed by an offender who has been previously convicted of one of these misdemeanors, or of any felony in connection with the coin.

Uttering medals, &c. **236.** It is also a misdemeanor, and punishable with a year's imprisonment, to utter as current gold or silver coin, any medal or piece of metal resembling such coin, in size, figure and colour, but of less value, with intent to defraud; or to make or have in one's possession for sale, or to offer for sale, or sell, any such medal or piece of metal, or one having thereon a device resembling any device on any of the Queen's current gold or silver coin, or being so formed that it can by gilding, silvering, or other like process be so dealt with as to resemble any such coin, without due authority or excuse, the proof of such authority or excuse lying on the accused.

Clipping. **237.** The unlawful clipping or lightening of current gold or silver coin is a felony, and punishable with penal servitude for fourteen years; and the mere possession of any filings, dust, &c., thus obtained with knowledge of the way in which they have been obtained, is also a felony, and punishable with penal servitude for seven years.

Copper and foreign coin. **238.** The unlawful coining or counterfeiting current copper (a) coin, or the gold or silver coin of any foreign State, or the possession of tools for such coining, is a felony, and punished with seven years' penal servitude. Coining counterfeit copper coin of a foreign State is a misdemeanor, and punishable with a year's imprisonment; but if the offender has been previously convicted for the same offence it becomes punishable with seven years' penal servitude. The uttering of counterfeit current copper coin, or the having in possession three or more pieces of such coin, with the intention of uttering them, and with the knowledge in either case that the coin is counterfeit, is a misdemeanor, and punishable with one year's imprisonment.

Defacing current coin. **239.** The defacing any current coin whatever by stamping on it any names or words is also a misdemeanor, and punishable with a year's imprisonment.

Forgery. Definition of act of forgery. **240.** The act of forgery consists in knowingly making a false document, with the intention—

- (a) that it shall be used or acted upon as genuine, or
- (b) that the actions of some person shall be influenced by the belief that it is genuine.

A "document" means any paper, parchment, or other material used for writing or printing, but it does not include trade marks on articles of commerce, or inscriptions on stone or metal, or similar writings.

(a) "Copper" includes bronze and other mixed metals.

241. A document is considered to be a false document · **Ch. VII.** if any material part of it purports to be made by or on behalf of an existing person who has not authorised its making, or by or on behalf of a person altogether fictitious. A document is also considered to be false, though made by a person in his own name, if it is so made with the fraudulent intention that it should pass as being made by someone else ; and such fraudulent intention may be inferred from the document itself, or proved by external evidence. For instance, supposing there was a well-known merchant of the name of Thomas Brown, and another Thomas Brown drew a bill in his own name, with the intention of passing it off as a bill of the merchant's, this bill would be a false document. A document made by a person in his own name may also become a false document if it is wrongly dated as to the time or place of making it, where such a particular is material. The making of a false document includes not only cases where the document is literally made by the offender, but also cases where the offender makes any material alteration in, addition to, or erasure from, a genuine document : as where a person alters the amount for which a cheque was drawn.

—
What
amounts to
a false
document.

242. It is not essential, in order to constitute the act of forgery, that the false document should be completed, or should be in such a form as would be binding in law ; though, if a person is charged with the forgery of any particular instrument, which has been made a special offence by statute, it must be shown that the document falls within the description of that instrument given in the statute, and has such a resemblance to it as would be likely to deceive an ordinary person.

Completion
of false
document
not
essential.

243. Under some statutes the act of forgery is of itself an offence, but unless it is so made by statute, the act of forgery does not amount to the offence of forgery unless the false document is made with intent to defraud, *i.e.*, with the intention of committing a particular fraud or specific wrong upon some person. In other words the act of forgery of a document, unless punishable by statute, does not amount to the offence of forgery, unless there is an intent to defraud. But in proving such an intent, it is not necessary to show that the offender had any particular person in his mind whom he intended to defraud. It is quite sufficient if an intention to defraud some person can be inferred from all the circumstances of the case, but a mere general intention to *deceive* the public or particular persons, as, for instance, by forging a surgeon's diploma, or by forging the signature of an officer to a pass, is not an intent to *defraud* within the meaning of this paragraph.

Intent to
defraud

Ch. VII. 244. Forgery at common law is only a misdemeanor (a).

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Punish-
ment of
forgery.

Under the various statutes making the forgery of particular documents an offence, the quality of the offence varies, and the punishment also varies very much, extending even in some cases to penal servitude for life. The details as to these offences will be found set out in the ordinary works on criminal law.

Uttering
forged
documents.

245. If any person knows that a document is forged, and, notwithstanding, fraudulently makes any attempt to use or act upon it, or to cause anyone else to use or act upon it as though it were genuine, he is said to utter the document, and is guilty of an offence of the same quality, and liable to the same punishment, as though he had actually forged the document.

It is a felony to use the probate of a will, or letters of administration, for the purpose of obtaining any property, with the knowledge that such probate or letters of administration were obtained by means of any forged testamentary writing, or by any false evidence: and this offence is punishable with penal servitude for fourteen years.

The use of any false document, or of any false representation or statement, in order to obtain any grant, increase, or payment of any pay or pension, or any privilege or advantage obtainable in pursuance of any warrant, order, or regulation of Her Majesty, or a Secretary of State, is a misdemeanor, and punishable with two years' imprisonment.

Possession
of forged
banknotes,
&c.

246. The mere purchase or possession of forged bank notes, foreign bonds, and some similar documents (whether complete or not), with the knowledge that they are forged, is in itself a felony, and so is also the making, sale, or possession of any bank-note paper, or any instruments or contrivances for making such bank notes, bonds, and other documents; and the offence is in each case punishable with penal servitude for fourteen years.

Forging
stamps, &c.

247. A variety of offences in relation to stamps, such as forgery, mutilation, erasure, user a second time, and so forth, and of offences relating to the making of false entries in registers of births, and books relating to public funds, the utterance of false certificates by registrars, officers of courts, &c., the issuing of false dividend warrants, and other matters, do not require detailed notice.

Forging
trade-
marks, &c.

248. Of the various offences relating to the use of counterfeit trade marks, it only seems necessary to specify the following :—

It is a misdemeanor punishable with two years' imprisonment either

(a) As to the punishment, see para. 19.

to forge any trade mark, or to make any imitation of a trade mark sufficiently like to be calculated to deceive, or— Ch. VII.

to knowingly use a trade mark, genuine or forged, on or in connection with anything, so as to indicate that it is the thing designated by such trade mark, when in fact it is not ;

with intent to defraud, or to enable some other person to defraud.

249. The offences relating to personation may be dealt with briefly. Personation.

250. Under the False Personation Act, 1874, the personation of any person, or of the heir, executor, administrator, wife, widow, next of kin, or relation of any person, with the intention of fraudulently obtaining any land, estate, chattel, money, valuable security or property, whatever, is a felony, and punishable with penal servitude for life. And by s. 142 of the Army Act any person is deemed guilty of personation who falsely represents himself to any military, naval, or civil authority to be a man in or to be a particular man in the regular, reserve, or auxiliary forces (a). Under False Personation Act, 37 & 38 Vict., c. 36.

251. There are also numerous other offences in relation to the personation of particular persons, such as owners of stock, voters, &c., which it is unnecessary to specify. Under other Acts.

252. The offences which come under the category of "malicious injury to property," are those in which the essence of the offence is the injury to the property of another, independently of the question whether or not the offender derives any advantage (b). Speaking generally, such offences are only punishable where they are done unlawfully and maliciously. A person is considered to cause an injury unlawfully and maliciously if he wilfully causes it without any justification or excuse ; that is to say, without having either a legal right to act as he does, or a *bonâ fide* and reasonable belief that he has such a right. And he is considered to cause it *wilfully*, if he causes it by an act which he must know will probably cause it, and is reckless whether he causes it or not. In some cases a person may even be guilty of an offence of this kind if he wilfully injures his own property, where this is done with the intention of defrauding some one else ; for instance, if a tenant under a lease were to burn his leasehold in order to defraud his landlord, or if a freeholder were to burn his freehold house in order to defraud an insurance company, this would in either case be an

(a) As to punishment and procedure, see this section and the remarks thereon *infra*.

(b) The principal statute relating to these offences in the 24 & 25 Vict. c. 97.

Ch. VII. offence, even though the property belonged in one case partially, in the other case entirely, to the offender. The more important offences of this character are the following.

Arson. 253. Arson consists in unlawfully and maliciously setting fire to

any building, or
 anything within a building, under such circumstances that if the building were thereby set fire to, this would be arson of the building, or
 any mine of mineral fuel, or
 any ship, whether completed or not (*a*), or
 any stack of cultivated vegetable produce, or of hay, heath, gorse, furze, or fern, or of turf, peat, coals, charcoal, wood, or bark, or
 any steer of wood or bark, or
 any crop of hay, grass, or cultivated vegetable produce, whether cut or standing, or
 any wood, coppice, or plantation, or
 any heath, gorse, furze, or fern.

Arson is in all cases a felony, and punishable with penal servitude for fourteen years. In some few cases it is punishable with penal servitude for life (*b*).

Attempt to
 commit
 arson.

254. If a person attempts by any overt act to commit arson of any building, or of anything within a building, or of any mine or ship, as above-mentioned, this is a felony, and punishable with penal servitude for fourteen years; and an attempt by any overt act to set fire to any such stack, crop, &c., as above-mentioned, under such circumstances that if the attempt succeeded, the offence would amount to arson, is also a felony, and punishable with seven years' penal servitude.

Casting
 away ship.

255. The unlawful and malicious destruction or casting away of a ship in any manner, and the attempt to do so, are also felonies, and punishable as arson or attempt at arson of such ship would be, with this qualification, that if the attempt be made by tampering with lights or signals, or showing false lights or signals, or by actually *doing* anything else, the punishment even for the attempt may be extended to penal servitude for life.

Letter
 threatening
 to burn, &c.

256. A mere threat to unlawfully burn or destroy any house or other building, or any rick or stack of agricultural produce, or any ship or vessel, or to kill or wound any cattle, is a felony punishable with ten years' penal servitude, if it is contained in any letter or writing and sent to

(*a*) See also as to burning Her Majesty's ships of war, &c., para. 283.

(*b*) These cases will be found set out in detail in the ordinary works on criminal law.

any person ; and (as in other cases of threatening letters) any person who knowing the contents of any such letter or writing in any way contributes to its being received, is equally guilty with the sender. Ch. VII.

257. The unlawful and malicious destruction of any part of a ship wrecked, or in distress, or of goods or other things belonging thereto, is a felony, and punishable with penal servitude for fourteen years. Destruction of wrecks.

258. The mere unlawful and malicious placing of gunpowder, or any other explosive substance, in or near any building or ship, with the intent to injure or destroy such building or ship, or anything in it, is a felony, and punishable with penal servitude for fourteen years, whether any explosion actually takes place or not. If a person actually, unlawfully and maliciously explodes any gunpowder, or other explosive substance, and thereby throws down or damages any part of a dwelling-house within which any person is at the time, or any part of any other building, in such a manner as to endanger the life of any person, this is a felony, and punishable with penal servitude for life (a). Use of explosives near buildings, &c.

259. Again, if any person unlawfully and maliciously damages a ship, whether finished or not, by means other than fire, or gunpowder, or other explosive substance, with intent to destroy it, or render it useless, this is a felony punishable with seven years' penal servitude. Damage to ships.

260. If any person unlawfully and maliciously removes, injures, or tampers with any buoys, or other navigation marks, or attempts by any overt act to do so, this again is a felony, and punishable with seven years' penal servitude. Interference with buoys.

261. It is also a felony, punishable with penal servitude for life, unlawfully and maliciously Destruction of canal works, &c.

to destroy any works belonging to harbours, canals, &c., or

to destroy or damage any bank or dam connected with the sea or any other water, in such a manner that any land or building may be, or be in danger of being, overflowed or damaged.

It is a felony punishable with seven years' penal servitude to unlawfully and maliciously remove any piles or materials used for securing any bank or dam connected with any harbour, canal, &c., or with the sea or any other water.

262. It is a felony punishable with penal servitude for life, unlawfully and maliciously, Destruction of bridges, &c.

(a) See also as to offences in relation to explosive substances, *supra* para. 255.

Ch. VII. — to destroy any bridge or aqueduct over or under which any highway, railway, or canal passes, or to do any injury to such bridge or aqueduct, whereby the same, or the highway, railway, or canal passing over or under it may be rendered dangerous or impassable or

to attempt to obstruct, upset, or injure any engine or vehicle using any railway by putting obstacles on the line, removing rails, showing false signals, &c.

Opening sluices. **263.** It is a felony punishable with seven years' penal servitude to open any floodgate or sluice, or in any way to injure any navigable river or canal with the intention of obstructing the navigation thereof.

Obstruction on railway. **264.** It is a misdemeanor punishable with two years' imprisonment to obstruct any engine or carriage using a railway by any unlawful act or wilful omission, or neglect.

Injury to telegraph. **265.** The unlawful and malicious injuring anything used in or about an electric or magnetic telegraph, or the obstructing the working thereof, is a misdemeanor, and punishable with two years' imprisonment; and any attempt by an overt act to commit any such offence is punishable as though the offence were completed.

Wounding cattle, &c. **266.** The unlawful and malicious killing, maiming, or wounding of any cattle is a felony punishable with penal servitude for fourteen years. The unlawful and malicious killing, maiming, or wounding of any other animal is a misdemeanor, and punishable with six months' imprisonment for the first offence, and with two years' imprisonment for any subsequent offence, provided that the animal is one which could be the subject of theft at common law (a), or is one which is ordinarily kept in a state of confinement, or for some domestic purpose.

Punishment of malicious injury generally. **267.** Besides the offences above enumerated, there are a great many others of the same character which it seems unnecessary to specify; and there is a general statutory provision that any wilful or malicious injury to any property whatsoever to an amount exceeding 5*l.*, and for which no special punishment has been provided, is a misdemeanor, and punishable with two years' imprisonment; or if committed between the hours of 9 p.m. and 5 a.m. with penal servitude. Any such injury to any property to a less amount is a misdemeanor, and punishable with two months' imprisonment or a fine of 5*l.* in addition to a sum not exceeding 5*l.* to be paid, by way of compensation, to the person whose property is damaged.

There are also special provisions for the protection of

(a) As to these, see para. 150, *et seq.*

Post Office property, which will be found in detail in the **Ch. VII.** ordinary works on criminal law.

268. Finally, it may be mentioned that the manufacture, or even possession of gunpowder, and other dangerous substances, or dangerous machines, with the intention that they may be used for the commission of any felony mentioned in either of the statutes 24 & 25 Vict. c. 97, and 24 & 25 Vict. c. 100 (which practically include all those enumerated in this section, and most of those enumerated in this section as to offences against the person), is in itself a misdemeanor, and punishable with two years' imprisonment.

Possession of gunpowder, &c., intended to be used in commission of felony.

(iv.) *Offences against Administration of Justice.*

269. Of these offences, probably the most frequent is the offence of perjury.

The giving of false evidence will only amount to perjury as a criminal offence at common law under the following circumstances :—

Definition of perjury.

- (a.) The witness must have been legally called before some court or person having by law or by consent of parties authority to take evidence.
- (b.) The proceeding in the course of which such evidence is given must be a judicial one, *i.e.*, one which relates in some way to the administration of justice, or which is held for the purpose of legally ascertaining some right or liability.
- (c.) The witness must have been duly sworn by the court or person before whom he is called, *i.e.*, he must either have taken an oath or made some affirmation allowed by law to be made in lieu of an oath.
- (d.) The false evidence must be an assertion as to some matter of fact, opinion, belief, or knowledge, which the witness does not believe to be true, or as to the truth of which *he knows* that he is ignorant.
- (e.) The assertion must be as to some point which is material, *i.e.*, it must be as to some point which affects, directly or indirectly, the probability of some question which is to be determined by the proceeding in the course of which it is given, or the credit of some witness giving evidence in the course of such proceeding.

There are, however, many other cases where the giving of false evidence, or the making of false declarations, are by statute declared to be perjury, and subjected to the

Ch. VII. penalties thereof; as, for instance, the cases specified in s. 142 of the Army Act. These will be found in detail in the ordinary works on criminal law. Perjury is a misdemeanor, and punishable with penal servitude for seven years (a).

Proof of charge. **270.** The parts of the evidence alleged to be false should be set out in the charge, and in order to prove a charge of perjury it is not sufficient to call one witness only, as that would be merely setting oath against oath; but such witness must be corroborated either by the evidence of another witness, or by the proof of material and relevant facts concerning his testimony.

Subornation of perjury. **271.** Subornation of perjury is the procuring a person to commit some act of perjury, which he actually does commit in consequence. This offence is also a misdemeanor, and punishable like perjury.

False swearing. **272.** The giving of false evidence before any person authorised to administer an oath upon a matter of public concern, though not in a judicial proceeding, is a misdemeanor (b), if it is given under such circumstances as would amount to perjury if it had been given in a judicial proceeding.

Other offences relating to obstruction of justice. **273.** There are numerous other offences relating to the obstruction of justice, of which the following may be noticed:—

It is a misdemeanor (c) either—

- (a.) To conspire to accuse any one falsely of a crime, or to do anything to obstruct the course of justice; or
- (b.) To try and dissuade witnesses lawfully bound to give evidence from doing so, in order to obstruct the course of justice; or
- (c.) To obstruct the execution of any legal process; or
- (d.) To intentionally conceal or procure the concealment of a felony; or
- (e.) To enter into an agreement for valuable consideration that the offender will either refrain from prosecuting a person for any felony, or will show favour to the accused in any such prosecution (d).

Being at large after sentence of penal servitude, &c. **274.** The mere fact of a criminal sentenced to penal servitude or transportation being at large within any

(a) If imprisonment be awarded in lieu of penal servitude, a maximum period of seven years may be given, but practically more than two years' imprisonment should never be given.

(b) As to the punishment, see para. 19.

(c) As to the punishment, see para. 19; the imprisonment may be with hard labour.

(d) As to misprision of treason, see para. 281.

part of Her Majesty's dominions during his term of penal servitude or transportation amounts to a felony, and is punishable with penal servitude for life (a). Ch. VII.

276. Offences relating to escape from civil custody would probably never be tried by court-martial, and it seems only requisite to observe here that— Escape.

Where a person assists any alien enemy who is a prisoner of war within Her Majesty's dominions, whether in confinement or on parole, to effect his escape; or

Where a person on the high seas assists any prisoner of war who has escaped from Her Majesty's dominions, in his escape towards any other country ;

the offence is in each case a felony, and punishable with penal servitude either for life or for fourteen years, or for seven years (but not for intermediate periods), or with the usual alternative of imprisonment.

(v.) *Offences against Public Order.*

The principal offences which it appears necessary to notice under this heading are those connected with treason, piracy, and slave-trading ; the offences relating to riots, unlawful assemblies, and so forth, being dealt with in another portion of this work (b).

276. High treason may be committed in any of the following ways :— High treason.

- (i.) By forming and manifesting by some overt act an intention to kill, or seriously injure, or imprison the Sovereign.
- (ii.) By forming and manifesting by some overt act an intention to kill the eldest son and heir, or the wife of the Sovereign.
- (iii.) By violating the wife or the eldest daughter of the Sovereign (if unmarried), or the wife of the eldest son and heir of the Sovereign.
- (iv.) By levying war against the Sovereign in any of her dominions.
- (v.) By aiding the enemies of the Sovereign ;
Thus an officer who betrays his trust, or a soldier who deserts in the field and joins the enemy, is guilty of high treason independently of his military offence.
- (vi.) By killing the Lord Chancellor, or Treasurer, or a Judge sitting in his place.

(a) Four years' imprisonment with hard labour may be given for this offence, instead of the ordinary maximum of two years.

(b) See Chapter XIII.

Ch. VII. It may be thought strange, that the actual killing of the Sovereign is not included in the above definition, but however anomalous it may be, as the law stands at present, the killing the Sovereign is not in itself high treason, though it has been held naturally enough to be an overt act manifesting an intention to kill the Sovereign.

Overt acts. **277.** In the same way :—

- (1.) a conspiracy to levy war against the Sovereign, and
- (2.) the forming and manifesting by any overt act any intention either
 - (a) to depose the Sovereign from the exercise of her royal authority in any part of her dominions, or
 - (b) to levy war against the Sovereign, or
 - (c) to instigate any foreigner with force to invade any part of the Queen's dominions,

though not in themselves high treason, are considered to be overt acts manifesting an intention to kill the Sovereign. If persons conspire to effect a certain object, the act of conspiring, and every overt act done in furtherance of the object of such conspiracy is considered to be an overt act manifesting an intention to effect that object.

Words
when
amounting
to overt act.

278. The mere speaking of loose words manifesting a treasonable intention, is not considered to be a sufficient overt act to support a charge of high treason, if the words have no reference to any special design. If, however, the words are words of advice, command, or persuasion, or are reduced to writing, or are printed and published, they are considered to be a sufficient overt act in themselves to support a charge of high treason. Words, also, whether they are spoken, or are written, or printed, but unpublished, may be taken together with any conduct which they accompany or explain, and may be made use of to show that an act which in itself appears to be innocent is really an overt act of high treason.

Procedure.

279. If the high treason charged is an intention to kill or injure the Sovereign, and the overt acts alleged to prove that intention are actual attempts to injure the person of the Sovereign, the procedure is the same as in ordinary trials for murder, but in other cases special provisions have been made. In such last-mentioned cases, a person cannot be convicted (unless he pleads guilty) except on the evidence of two witnesses, who must either both speak to the same overt act of the kind of treason with which he is charged, or must one of them speak to one such act, and the other to another such act. In such cases, also, the accused is entitled to have a copy of the indictment against him, a list of the witnesses who are to

be called, and a list of the jury who are to try him, given **Ch. VII.**
to him in the presence of two credible witnesses, at least —
ten days before the trial.

280. The punishment for high treason is death by hanging, or (if the Sovereign specially directs it) by beheading. Punishment.

281. A person is guilty of misprision of treason if he knows that any other person has committed high treason, and does not within a reasonable time give information thereof to a judge of assize or a justice of the peace; the punishment awarded must be imprisonment for life and forfeiture to the Queen of all the goods of the offender, and the profits of his lands during his life. The lists of the witnesses and jury must be given as in cases of high treason. Misprision of treason.

282. The forming and manifesting by any overt act of any of the intentions (a), (b), and (c), mentioned in para. 277, may, instead of being treated as an overt act manifesting an intention to kill the Sovereign, be treated as a substantive offence. In that case it is called a treasonable felony, and is punishable with penal servitude for life; but if an offence is once treated in this way as a felony, the offender cannot be afterwards tried on the same facts for high treason. For the greater protection of the Sovereign certain special punishments are provided for persons who are guilty of any assaults or contempts against her person; these, however, it is unnecessary to mention in detail. Treasonable felonies.

283. Closely allied to high treason are the offences of burning ships of war, &c., and of exciting disaffection among the forces of the Sovereign. Burning ships of war, &c.

As to the first of these, if any person sets on fire, burns, or destroys—

- (a) any of Her Majesty's vessels of war, whether afloat, or being built or repaired in any royal or private dockyard, or
- (b) any of Her Majesty's arsenals, magazines, dockyards, ropeyards, victualling offices, or buildings connected therewith, or
- (c) any timber, or materials there placed for the building, repairing, or fitting out of vessels, or
- (d) any of Her Majesty's military, naval, or victualling stores, or ammunition of war, or
- (e) any places where such stores or ammunition are kept, in any part of Her Majesty's dominions,

he is guilty of felony, and must be sentenced to death, though the sentence may be recorded if the court thinks fit (a).

(a) As to the effect of recording sentence of death, see para. 6.

Ch. VII. **284.** With regard to the promotion of disaffection, it is a felony punishable with penal servitude (a) for life to endeavour either—

Exciting
disaffection.

to seduce any member of the land or sea forces from his duty and allegiance, or
to incite any such person to mutiny, or
to make any mutinous assembly, or
to commit any traitorous or mutinous practice whatever.

In some cases these offences might be either treated in this way as felonies, or as high treason, or misprision of treason; but if an offence is once so treated as a felony, the offender cannot afterwards be tried upon the same facts for high treason, or misprision of treason.

Piracy.

285. Piracy may be either piracy by the law of nations, or piracy by statute law.

By the law
of nations.

286. Practically speaking, piracy by the law of nations is committed by any person (whether a British subject or not) who takes possession of any ship on the high seas, or within the jurisdiction of the Admiralty, and deals with such ship, or with anything in or belonging to such ship in a manner which would amount to robbery, if committed on land; and it is punishable in the same way as such robbery would be punishable.

By statute.

287. Piracy by statute may be found defined in detail in works on criminal law; it is punishable with penal servitude for life (b).

288. Pirates, however, whether pirates by the law of nations or by statute, become liable to much more severe punishment if they employ actual violence; for if any pirate assaults with intent to murder, or wounds, or unlawfully does any act whereby any person's life is endangered, with the intention of committing, or at the time of, or immediately before, or immediately after committing an act of piracy, he will be guilty of felony, and must be sentenced to death. The sentence, however, may be recorded if the court thinks fit (c). Every commander or member of the crew of any merchant ship which carries guns and arms is bound to fight pirates, and to defend his ship, and if he fails to do so, or discourages any one else from doing so, so that the ship falls into the hands of the pirates, he is guilty of a misdemeanor, and upon conviction must be imprisoned for six months (d).

Slave
trading.

289. Slave trading is a felony, and punishable with

(a) If imprisonment be awarded in lieu of penal servitude, a maximum period of three years may be given, and it must be without hard labour.

(b) If imprisonment be awarded in lieu of penal servitude, a maximum period of three years may be given, and it must be without hard labour.

(c) As to the effect of recording sentence of death, see para. 6.

(d) But without hard labour.

penal servitude for fourteen years (a): and any person engaging to serve on board any vessel with the knowledge that it is to be used for slave-trading is, if a captain, master, mate, surgeon, or supercargo, considered to be guilty of the full offence of slave trading, and punishable accordingly; and if engaging as any other member of the crew, held guilty of a misdemeanor, and punishable with two years' imprisonment.

Ch. VII.
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(a) If imprisonment be awarded in lieu of penal servitude, a maximum period of five years may be given.

CHAPTER VIII.

POWERS OF COURTS OF LAW IN RELATION
TO COURTS-MARTIAL AND OFFICERS.

Courts-martial and officers amenable for acts done with out or in excess of jurisdiction.

Exceptions in case of injuries affecting only military position.

Meaning of acting without jurisdiction.

Illustrations of acting without jurisdiction.

1. The members of courts-martials and officers in the exercise of individual authority are, like the inferior civil courts and magistrates, amenable to the superior civil courts for injury caused to any person by acts done either without jurisdiction, or in excess of jurisdiction; although there is not, in the ordinary sense of the word, any appeal from the decision of a court-martial or from the order of an officer. Such injuries will equally be inquired into whether they affect the person, property, or character of the individual injured; and whether the individual injured is a civilian or is subject to military law.

2. There is, however, this material exception in the case of a person subject to military law, that if the injury affects only his military position or character, a court of law will not interfere. He has agreed to subject himself to military law in those respects, and must take the consequences. Thus, the dismissal of an officer from the service, the deprivation of rank, or the reduction or deprivation of military pay, will not be remedied by a court of law (a).

3. The jurisdiction of a tribunal may be limited by conditions as to its constitution, or as to the persons whom or the offences which it is competent to try, or by other conditions which the law makes essential to the validity of its proceedings and judgments. If the tribunal fails to observe these essential conditions, it acts without jurisdiction. An individual officer acts without jurisdiction if he exceeds the limits of the authority conferred on him, whether by Act of Parliament, the custom of the service, or lawful delegation from a superior officer.

4. Thus a court-martial will act without jurisdiction if it is not properly constituted; for instance, if the number of members is below the legal minimum, or if all the members of a general court-martial have not held commissions for the three years preceding the day of assembling the court, or if the president is not of the proper

(a) See *Foe's case*, below, p. 179; *Mansegh's case*, below, p. 181; and *Roberts' case*, below, p. 182; and *Re Tufnell*, p. 182, note.

rank, or has not been properly appointed. For the above reason it is directed by the Rules of Procedure that a court-martial, before acting, shall ascertain that it is properly constituted, a provision which, as will be seen, is required for the protection of the members themselves (a). Ch. VIII.

5. An officer who without due authority confirms the finding and sentence of a court-martial, and a commanding officer who punishes a warrant officer, will also act without jurisdiction. Again, a court-martial or officer dealing with a person who is not amenable to military law, as if he were so amenable, will act without jurisdiction (b). So, too, if a court-martial convicts the prisoner of an offence which is not an offence under the Army Act or (save as provided by s. 56 of the Army Act) of an offence with which he was not charged, the court acts without jurisdiction. Where the offence is not properly charged, the prisoner may be held not to have been charged with the offence at all; but the proceedings of military courts will not be scrutinised with the same strictness as those of inferior civil courts. Further illustrations.

6. The result of acting without jurisdiction is that the act is void, and each member of the court-martial, or the officer who so acted, is liable to an action for damages. Result of acting without jurisdiction.

7. The consequences of exceeding the bounds of jurisdiction are the same as those of acting without jurisdiction. For instance, when a court having power to award two years' imprisonment, sentenced the prisoner to fifteen years' imprisonment, the sentence being in excess of that which the court was authorised to pass, was held to be void, and the members of the court were held liable to an action for damages (c). Other cases of this class arise where jurisdiction is exercised with cruelty or oppression amounting to an abuse of it. A power to award summary punishment or imprisonment does not justify a court or officer in causing the punishment to be inflicted in a barbarous manner, or with circumstances of undue severity; and in such cases, though there is a jurisdiction, yet the justification for the act of the court or officer, which would otherwise exist by reason of the jurisdiction, is taken away by reason of the excess in the mode of exercising it (d). Excess of jurisdiction.

8. The proceedings by which the courts of law supervise the acts of courts-martial and of officers may be criminal Modes of interposition of courts of law.

(a) See Rule 22.

(b) See *Comyn v. Sabine*, and other cases, below, p. 192.

(c) *Frye v. Ogle*, below, p. 188.

(d) The question whether an officer is liable to an action for ordering an arrest or prosecution maliciously and without probable cause, will be considered separately. See below, p. 197.

Ch. VIII. or civil. Criminal proceedings take the form of an indictment for assault, false imprisonment, manslaughter, or even murder. Civil proceedings may either be preventive, *i.e.*, to restrain the commission or continuance of an injury ; or remedial, *i.e.*, to afford a remedy for injury actually suffered. Broadly speaking, the civil jurisdiction of the courts of law is exercised as against the tribunal of a court-martial by writs of prohibition or certiorari ; and as against individual officers by actions for damages. A writ of habeas corpus also may be directed to any officer, governor of a prison, or other, who has in his custody any person alleged to be improperly detained under colour of military law. The writs of prohibition, certiorari, and habeas corpus will be first discussed, then the subject of actions for damages, and lastly, that of liability to criminal proceedings.

(i.) *Writ of Prohibition.*

Definition
of the writ
of prohibition.

9. The writ of prohibition issues out of the High Court of Justice to any inferior court, when such inferior court concerns itself with any matter not within its jurisdiction, or when it transgresses the bounds prescribed to it by law. The writ forbids the inferior court to proceed further in the matter, or to exceed the bounds of its jurisdiction ; and if want of jurisdiction in the inferior court be once shown, any person aggrieved by the usurpation of jurisdiction is entitled to the writ as a matter of right.

When prohibition
issue.

10. The writ will not be granted for irregularity in the proceedings or wrong decision of the merits : nor when it can be of no use, as, for example, after a sentence has been carried into execution ; nor will it issue on the ground that the facts which establish a military offence disclose at the same time a greater offence (*e.g.*, high treason) cognisable by the civil courts (*a*).

Grant v.
Gould, 1792.

11. Applications for a prohibition to restrain courts-martial have hitherto been few, and uniformly unsuccessful. The earliest reported case is that of *Grant v. Gould* (*b*). In 1792 Serjeant Grant of the 74th Regiment was tried by court-martial on a charge of having persuaded two drummers of the Coldstream Guards to desert, and enlist in the service of the East India Company. He was convicted and sentenced to be reduced to

(a) As to the general law, see the exhaustive opinion of the Judges in *Mayor of London v. Cox*, L. R. 2 H. L. 229, and the cases there cited. The right to a writ of prohibition has frequently been considered with reference to the Ecclesiastical Courts, and it is clear that the courts of law will not entertain questions of their practice, so long as they do not exceed their jurisdiction.

(b) 2 H. Blackstone's Reports, 69. McArthur on Courts-Martial, 4th edition, i. 120.

the ranks, and to receive one thousand lashes. Grant **Ch. VIII.** moved for a prohibition to prevent the execution of this sentence, on the ground that he was not a soldier and therefore not liable to be tried by court-martial, that evidence was improperly admitted and rejected, and that he was convicted of an offence not specifically charged. The court, being of opinion that at most an error in the proceedings had been made, refused the writ. At the same time, Lord Loughborough, in delivering the opinion of the court, affirmed the general principle that "Naval Courts-Martial, military Courts-Martial, Courts of Admiralty, Courts of Prize, are all liable to the controlling authority which the courts of Westminster Hall have from time to time exercised for the purpose of preventing them from exceeding the jurisdiction given to them."

12. The case of Lieutenant Poe (*a*), which occurred in 1832, is the authority for the proposition that a prohibition will not issue after sentence confirmed and executed. Lieutenant Poe, being a passenger on board the ship *Cæsar* on her way to England, was accused of stealing a 5*l.* note, and certain articles of wearing apparel from his servant's trunks, which were kept in his (Poe's) cabin. On investigation of the charge by the captain of the ship and other officers on board, Lieutenant Poe was expelled by the officers and passengers on board from their table and society during the remainder of the voyage. Lieutenant Poe never took any measures to vindicate his honour, and was consequently tried for conduct to the prejudice of good order and military discipline, found guilty, and sentenced to be dismissed the service. The sentence was confirmed by the King and carried into execution; and an application on behalf of Lieutenant Poe that a prohibition might issue "to the Judge-Martial and Advocate-General of his Majesty's forces" to restrain the execution of the sentence was refused, Chief Justice Denman observing that even supposing the case of *Grant v. Gould* to furnish some argument that a writ of this nature might be directed to him (the Judge-Advocate) before execution of the sentence, still it was impossible to discover what he could be required to abstain from after execution. *Poe's case, 1832.*

13. The comparatively recent case of Serjeant M'Carthy shows that a prohibition will not issue merely because the evidence given in support of a military charge discloses a higher civil offence. In 1866 Serjeant M'Carthy (*b*) was tried by a general court-martial on a charge of "coming to the knowledge of an intended mutiny, and not revealing *McCarthy's case, 1866.*"

(*a*) *Re Poe*, 5 Barn. & Adol. 681.

(*b*) 14 W. R. (Ir.) 918.

Ch. VIII. such knowledge to his superior officers." The evidence given implicated him in the Fenian conspiracy, and showed endeavours on his part to induce soldiers to become members of that conspiracy, and various other acts amounting to overt acts of treason. After the close of the prosecution the court-martial was adjourned in order to permit the prisoner to apply to the Court of Queen's Bench (Ireland) for a writ of prohibition on the ground that the evidence establishing the military offence disclosed also that the prisoner was guilty of treason, in which case a court-martial would have no jurisdiction. The court held that the military offence does not merge in the greater offence, and declined to accede to the application.

No example of issue of prohibition to a court-martial. **14.** Although the writ of prohibition has never actually been issued to a court-martial, there seems no doubt that it might issue in a proper case; as, for example, if a court-martial were proceeding to try a person not subject to military law, or had passed a sentence which they had no power whatever to pass.

To officer. **15.** The question whether a writ of prohibition would issue to an officer exercising individual authority does not seem ever to have been raised.

Dis-obedience of prohibition. **16.** Disobedience of a prohibition is a contempt of court, and as such punishable by fine and imprisonment at the discretion of the court which granted the writ.

(ii.) *Writ of Certiorari.*

Definition of the writ of certiorari. **17.** Certiorari is a writ issuing (in most cases) out of the High Court of Justice to the judges or officers of inferior courts, and commanding them to certify and return the record of a matter, *e.g.*, a conviction or order, depending before them, to the end that more sure and speedy justice may be done. If the conviction or order of the inferior court is found to be bad in law, it will be quashed by the High Court.

When certiorari will issue. In ordinary cases the writ is issued on the application of the person aggrieved almost as a matter of course, unless he has by his conduct precluded himself from taking an objection (*a*). In the case of a court-martial sentence, the writ will issue only when the rights affected by the judgment of the court are civil rights, and the court is acting without jurisdiction: it will not issue when the rights affected are dependent on military status and military regulations (*b*).

(*a*) *R. v. Justices of Surrey*, L. R. 5 Q. B. 467, and see on the general law *Colonial Bank v. Willan*, L. R. 5 P. C. 417.

(*b*) *Re Mansergh*, 1 Best & Smith, 400; 30 L. J. (N.S.) Q.B. 296. *Re Roberts*, reported in "Times," 11th June, 1879.

18. Major Mansergh's case was as follows :—In January 1858 Major (then Captain) Mansergh was on duty with his regiment, the 6th Foot, at Calcutta, under the command of Colonel Barnes. In February 1858 Brevet-Major Mansergh was gazetted to a majority in the 15th Foot, at that time stationed in England. Notice of this appointment was transmitted to India and notified in general and regimental orders in the usual way, after which notification Major Mansergh ceased, according to the rules of the army, to belong to the 6th Foot. The latter regiment was about to start on active service, when Colonel Barnes informed Major Mansergh of his promotion, and desired him to hand over his company to another officer, which he did accordingly.

Ch. VIII.
—
Mansergh's
case, 1858.

19. Subsequently Major Mansergh conceiving that the notification of his appointment to the 15th Foot had been obtained by Colonel Barnes for the purpose of excluding him from active service, wrote a letter to the Colonel expressing that view in strong language. For this he was placed under arrest, and subsequently tried by court-martial on a charge of having addressed to his superior officer a letter containing highly offensive and insulting language, such conduct being grossly insubordinate, highly unbecoming a commissioned officer, and subversive of military discipline. Major Mansergh was found guilty, and sentenced to be dismissed the army, and the proceedings having been confirmed were sent to England and deposited with the Judge Advocate-General. Major Mansergh then applied to the Court of Queen's Bench for a rule calling on the Judge Advocate-General to show cause why certiorari should not issue to bring up, in order that it might be quashed, the record of his conviction; on the ground that after his promotion he ceased to be within the command of the Commander-in-Chief in India, and that consequently the court-martial had no jurisdiction to try him.

His trial by
court-
martial.

20. The Court refused the application—Chief Justice Cockburn observing "I quite agree that when the civil rights of a person in military service are affected by the judgment of a military tribunal, in pronouncing which the tribunal has either acted without jurisdiction or has exceeded its jurisdiction, this court ought to interfere to protect these civil rights, *e.g.*, where the rights of life, liberty, or property are involved, although I do not know whether the latter case could occur. Here however there was nothing of the sort, the only matter involved was the military status of the applicant—a thing which depends entirely on the Crown, seeing that every person who enters into military service engages to be entirely at the will and pleasure of the Sovereign. Then there is this additional fact that these proceedings originated abroad in a country

Refusal of
application
for certio-
rari.

Ch. VIII. the tribunals of which are not subjected to our jurisdiction. It is contended that because we have the record of the proceedings in the country we have jurisdiction over it. Assuming that for a moment, yet when we look at the particular nature of the case before us, we see that the military status of the applicant alone is affected, and consequently if he had just cause of exception to the act of the tribunal by which he was sentenced, he might have appealed to the Queen to reconsider the matter with the advice of her Judge Advocate. For these reasons I am of opinion that in this case we have no jurisdiction to grant a certiorari; besides which, certiorari being a discretionary writ, we most certainly ought not in the exercise of our discretion to grant it if we had the jurisdiction." Three other judges concurred, and the application was refused.

Roberts's case, 1879.

21. A similar application in June 1879 by Captain Francis Roberts of the 94th Regiment, was equally unsuccessful. Captain Roberts founded his application on the ground that the sentence of the court-martial dismissing him from the service was invalid, in that it simply sentenced him to be dismissed the service without stating the cause of dismissal. The charge against Captain Roberts appears to have been twofold:—(1.) That he had been guilty of scandalous conduct unbecoming an officer and gentleman in having written and sent to certain persons statements wilfully false and malicious respecting Colonel Lord John Taylour, his commanding officer. (2.) That he had been guilty of conduct prejudicial to good order and military discipline in writing the statements referred to, which were charged simply as false. An affidavit was filed by Mr. Roberts stating that since the sentence he had been occupied in various attempts to obtain a revision of the sentence.

No distinction between his case and Mansergh's case.

22. It was attempted to distinguish this case from that of Mansergh, on the ground that here civil rights were indirectly affected, as Mr. Roberts would lose his rights to pension or retiring allowance, and would lose the sum he had paid for purchase. But it was at once pointed out by the Chief Justice and Mr. Justice Mellor, that the rights referred to were purely military in their nature and dependent on military status and military regulations, and *Mansergh's case* was considered decisive against granting the application (a).

(a) "Times," 11th June, 1879. In the case of *Re Tufnell, L.R.*, 3 Ch. D. 164, a petition of right was presented by an army surgeon, who had been compulsorily retired on half pay, for the injury thereby sustained by him. A demurrer by the Attorney-General to the petition was allowed, the Vice-Chancellor stating the law clearly to be that "every officer in the army is subject to the will of the Crown, and can be removed and put on half pay, or dealt with as the Crown, with a view to the public convenience, thinks best."

(iii.) Writ of Habeas Corpus.

Ch. VIII.

23. Any person who is detained in what he conceives to be illegal custody by order of a court-martial or other military authority, can apply for a writ of *habeas corpus*. This writ is the most celebrated writ in English law, being the great remedy for a person wrongfully deprived of his liberty. There are varieties of it which are employed for merely removing prisoners from one court to another for the better administration of justice; but by far the most important species is that which affords the above remedy, and is known as *habeas corpus ad subjiciendum*. It is addressed to the person who detains another in custody, and commands him to produce the body of the prisoner to do and submit to whatever the judge or court awarding the writ shall consider in that behalf. It issues out of the High Court of Justice, and into all parts of the Queen's dominions, save as provided by 25 & 26 Vict. c. 20, which enacts that no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where Her Majesty has a lawfully established court of justice having authority to issue this writ and to ensure its due execution. The person to whom it is addressed must make a return to the writ stating why he holds the prisoner in custody; and must bring the prisoner into court. On the return of the writ the prisoner is either discharged, or, if the return is sufficient, *i.e.*, shows sufficient cause for the detention in custody, is remanded to custody, or is admitted to bail.

Writ of Habeas Corpus, the remedy against illegal custody.

24. The writ will issue to any person who has a prisoner in custody, whether civil or military, if the affidavits in support of the application show some probable ground for awarding it. The writ will not as a rule issue to question the mode in which military jurisdiction has been exercised (*a*); but if a particular formality is by statute requisite to make valid an order (for instance) for imprisonment, and the formality is shown not to have been followed, then it may be granted (*b*).

When habeas corpus will issue.

25. It would seem, as a rule, to be a sufficient return to the writ that the prisoner is a person subject to military law, and that all the proceedings were according to military law (*c*).

What is a sufficient return to writ.

26. Blake's case (*d*), in which the application for the

General disinclination

(a) *Blake's case*, 2 M. and S. 428.

(b) *Allen's case*, 30 L. J. (N.S.) Q.B. 38; 7 Jur. (N.S.) 234, but see now Army Act, s. 172 (4), and below, para. 37.

(c) *R. v. Suddis*, 1 East, 308; and as to general law, *Brenan's case*, 10 Q.B. 492.

(d) 2 M. and S., 428.

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Of courts to
interfere
with
matters of
discipline.
Blake's case,
1814.

writ was refused, is a strong instance of the disinclination of courts of law to interfere with matters of military discipline. The writ was moved for on behalf of Lieutenant Blake, of the 55th Regiment, to be addressed to the commanding officer of the infantry barracks at Windsor. The affidavit in support of the motion stated that Lieutenant Blake, being on leave and hearing that there were certain charges alleged against him, voluntarily surrendered himself to take his trial, that on the 21st September he was placed under arrest and in close confinement, and that until the latter end of October he was not permitted to quit his room, but afterwards, on a representation that his health suffered, was allowed to take exercise. On the 1st November, not having been furnished with any copy of the charges against him, he presented a memorial to the Commander-in-Chief, but did not receive any answer. On the 16th of November he was officially informed that a warrant had been signed for holding a court-martial, and was furnished with a copy of the charges, which consisted among others of certain offences stated to have been committed at Windsor towards an officer of the same regiment. On the 22nd, the 55th Regiment was ordered on foreign service, and shortly afterwards sailed for Holland. The affidavit then stated that all or many of the witnesses who might be called for the prosecution or defence had sailed with the regiment, that the laws of this realm would not permit him to be sent to a foreign country for trial, and therefore he could not be brought to trial before the return of the regiment. It further alleged that, as a matter of fact, a sufficient number of officers might at any time have been conveniently assembled for the purpose of constituting a court-martial; and therefore there had been ample opportunity for conveniently assembling one between the arrest and the signing of the warrant, and also between the signing of the warrant and the sailing of the regiment.

Rule nisi
granted.

27. The Court inquired if there was any instance of a *habeas corpus* to take a military subject out of military arrest, and were referred to the case of Serjeant Wade (a) where a rule nisi (*i.e.*, a rule calling on the other side to argue the question and show why the writ should not issue) had been granted. Mr. Justice Dampier, however, said he hesitated about granting a rule nisi, because upon the question whether a court-martial could be conveniently assembled, if the return should be general that a court-martial could not be conveniently assembled, the court would be concluded, and he conceived the truth of such return could hardly be entered into upon an action for a false return,

(a) Cited in the report of this case, 2 M. & S. 429, n.

and Mr. Justice Le Blanc concurred. A rule nisi was, however, granted, and on its coming on to be argued, an affidavit from the Judge Advocate-General was produced, stating that proceedings were instituted for bringing Blake to trial as soon after his arrest as could conveniently be done; and that he believed Blake would have been tried before, had not the trial been postponed partly on account of the absence in the West Indies of persons alleged by Blake to be material for his defence, and partly on account of the embarkation of the 55th Regiment.

28. The Court refused the writ, Lord Ellenborough, C.J., observing, "Up to the 16th November the applicant seems to have thought it a fair time, and the delay since has been satisfactorily explained; it is not a wanton or oppressive delay, but arising out of the circumstances of the country. We cannot lay down any general rule, but must in a very great degree give credence to people in high situations when they depose that all has been done which could conveniently and according to the course of office be done, and unless something be shown to the contrary" (a).

Rule discharged.

29. The leading authority as to the sufficiency of a return to the writ which states that the prisoner is in custody under the sentence of a court-martial competent to pass such sentence on him, is *Suddis' case*, decided in 1801 (b).

Sufficiency of return that prisoner is in custody under sentence of competent court.

30. *Suddis* was a gunner of the Royal Artillery sentenced at Gibraltar by a general court-martial to fourteen years' transportation for having received articles stolen from a warehouse in Gibraltar. A writ of *habeas corpus* was directed to the Governor of Portsmouth to bring him up from custody. It was held a sufficient return to the writ that the defendant was in custody under the sentence of a court of competent jurisdiction to inquire into the offence and to pass such a sentence, without setting forth the particular circumstances to warrant the sentence. Lord Kenyon, C.J., said, "We are not now sitting as a Court of Error to review the regularity of these proceedings; nor are we to hunt after possible objections." And Mr. Justice Grose, "It is enough that we find such a sentence pronounced by a court of competent jurisdiction to inquire into the offence, and with power to inflict such a sentence; as to the rest we must presume *omnia rite acta*."

Suddis' case, 1801.

(a) In the case of Lieut. Hall (*R. v. Cuming, F. p. Hall*, "Times," 31 March, 1887, L. R. 19 Q. B. D. 13), a writ of *habeas corpus* was applied for to discharge a lieutenant in the Navy who had been arrested by order of the Admiralty for alleged desertion, and was detained as a prisoner on board one of Her Majesty's ships under the command of Captain Cuming, with a view of being brought to trial before a court-martial. The court admitted Lieut. Hall to bail while the case was pending, but ultimately refused the writ.

(b) *R. v. Suddis*, 1 East 306.

Ch. VIII. 31. In the case of *Jones v. Danvers* (a) it was held that the court cannot grant a *habeas corpus* to bring up a defendant who is in military custody, for the purpose of charging him in execution for a civil debt. By the court: "We have only civil jurisdiction, and have no authority to change the custody in such a case as this."

Jones v. Danvers,
1839.

Instances of discharge obtained by writ. 32. In the two following cases the prisoner was discharged by means of a writ of *habeas corpus*; in the first case because the return did not sufficiently show the military character and obligations of the prisoner; in the second for want of jurisdiction in the officer who confirmed the sentence of the court-martial.

Douglas' case, 1842.

33. Captain Douglas, of the 49th Madras Native Infantry, was committed by a magistrate to prison as a deserter, and afterwards by authority of the Secretary at War was given up to Lieut.-Colonel Hay, commanding the East India Company's troops at Chatham, and by him removed under military arrest to that place. A *habeas corpus* was thereupon obtained addressed to Colonel Hay and every officer or person having the custody of Captain Douglas, and he was brought into court in obedience to the writ. The return to the writ alleged that the prisoner was detained as a deserter under 5 & 6 Vict. c. 12, s. 32, but did not expressly show that he was a soldier and ought to be with his corps. Captain Douglas was in consequence discharged (b).

Porrett's case, 1844.

34. Porrett, a soldier of the Bombay Army, was sentenced by a general court-martial to seven years' transportation for embezzlement. The sentence of the court-martial was confirmed by Sir C. Napier, the Governor of Sindh. A writ of *habeas corpus* was obtained and Porrett was discharged, as it was shown that Sir C. Napier had no power to confirm the sentence of the court (c). Had the question been one of military procedure instead of jurisdiction, the result would doubtless have been different.

Allen's case,
1860.

35. When a military prisoner is detained in a prison without any legal warrant or order for his custody in that prison, he can obtain his discharge by *habeas corpus*. In 1859 Lieutenant W. H. C. Allen was tried by a general court-martial at Shahjehanpore for the murder of his native servant, and, being found guilty of manslaughter, was sentenced to four years' imprisonment without hard labour. General Lord Clyde confirmed the sentence, and ordered him to be imprisoned in the Fort of Agra. On the 29th November, 1859, Lord Clyde gave a written

(a) 5 M. & W. 231.

(b) 3 Q. B. 825.

(c) Perry's Oriental cases, 414.

order for his removal in military custody to England, there to undergo the remainder of his sentence. On arrival he was successively committed to Millbank, the military prison at Weedon, Newgate, and the Queen's Prison. After having been four months in the Queen's Prison he applied to the Court of Queen's Bench for a writ of *habeas corpus* on the ground that his detention was illegal, there being no such written order as required by the Mutiny Act to the keeper of the Queen's Prison to receive Lieutenant Allen into his custody. In the result the prisoner was discharged.

36. The Chief Justice Cockburn observed that it was enough to say that there was no order in writing under the provisions of the Mutiny Act by virtue of which the keeper of the Queen's Prison could detain Lieutenant Allen. All that appeared was that Lord Clyde, the commanding officer of the district, having first directed that Lieutenant Allen should be placed in Agra, afterwards made an order for his removal to this country to undergo the remainder of his sentence; but it did not appear that either the officer commanding the regiment, or Lord Clyde, had made any order on the keeper of the Queen's Prison to receive Lieutenant Allen. The deficiency was attempted to be made up by an order under the hand of the Adjutant-General representing the Commander-in-Chief, and stating that Lieutenant Allen had been convicted by a court-martial in India. That, however, was not a legal warrant, and under the circumstances the court was constrained, though unwillingly, to discharge the prisoner (a).

Observations of
Chief Justice
Cockburn.

37. It is now provided by the Army Act (b), that, where a military prisoner is for the time being in any custody in which he *might* legally be kept, informality or error in the order or warrant, or the authority by or in pursuance whereof he is detained, shall not make the custody illegal; and any such order or warrant may be amended. A case such as that of Lieutenant Allen can, therefore, scarcely occur again.

Military custody not now illegal by reason merely of informality, &c.

38. Where a writ of *habeas corpus* was issued to an officer to produce a recruit who was detained as a deserter, and the officer by direction of the Horse Guards discharged the prisoner, and made no return, the court were of opinion that he ought to have returned the fact of the discharge, but would not grant an attachment for contempt (c).

Application for attachment against officer failing to make return.

39. In Simmons on Courts-martial (d) a case is cited of

Canadian case cited

(a) 30 L. J. (N.S.) Q.B. 38; 7 Jurist (N.S.) 234.

(b) Section 172 (4).

(c) *Re Gavin*, 15 Jurist, 329.

(d) 7th edn., p. 185.

Ch. VIII. a store-keeper who had been convicted by court-martial under the 17th section of the Mutiny Act on a charge of embezzling or fraudulently misapplying, and imprisoned in a civil gaol, obtaining his release by *habeas corpus* from the Court of Queen's Bench at Montreal. The court adjudged the commitment to be void by reason of the form of charge and finding, and ordered the prisoner to be discharged, "because the charge and conviction were in the alternative . . . without any certainty as to any or either of the two charges in the disjunctive, and this is matter of substance."

in *Simmons*
on Courts-
martial.

(iv.) *Actions for Damages.*

Actions
against
members of
courts-
martial and
individual
officers.

40. It is a general rule of law that magistrates and others, who, acting without jurisdiction, or in excess of their jurisdiction, violate the personal rights of any person by causing his arrest, imprisonment, or otherwise, are liable to an action for damages (*a*). Accordingly, members of a court-martial who try a person not subject to military law, or for an act which is not an offence cognisable by them, or who pass a sentence which they have no power to pass, are all liable to an action at the suit of the person aggrieved; and the officer who confirmed the proceedings will also be liable (*b*). The same rule is applied to officers in the exercise of individual authority; so soon as they transgress the bounds of their lawful authority they expose themselves to an action, though they may have acted with entire *bona fides*.

Illegal
sentence by
court-
martial.

Frye v. Ogle,
1743.

41. The case of Lieutenant Frye (*c*), which occurred in 1743, and is especially remarkable from its sequel, is a leading authority respecting the liability of all who are parties to an illegal sentence passed by a court-martial. Lieutenant Frye, of the Marines, was brought to a court-martial at Port Royal, in Jamaica, by his captain, for disobedience in refusing to assist another lieutenant in carrying an officer prisoner on board ship without a written order from the captain. Part of the evidence produced against Lieutenant Frye at the court-martial consisted of depositions made by illiterate natives, whom he had never seen or heard of, and reduced into writing several days before he was brought to trial; and upon his objecting to the evidence he was brow-beaten and overruled. Lieutenant Frye was sentenced to 15 years' imprisonment, and rendered for ever incapable of serving His Majesty,

(*a*) *Crepps v. Durden*, 1 Smith Lead. Ca. 7th edn. 717.
(*b*) *Frye v. Ogle*, McArthur on Courts-martial, 4th edn. i., p. 268;
Comyn v. Sabine, cited in 1 Smith Lead. Ca. 7th edn. 670, 679.
(*c*) McArthur on Courts martial, 4th edn. i., p. 268, and App. XXIV.

though the Court had only power to award two years' imprisonment. On his arrival in England, his case was laid before the Privy Council and the punishment remitted by His Majesty. Ch. VIII.

42. Some time afterwards he brought an action in the Court of Common Pleas against Sir Chaloner Ogle, the president of the court-martial, and obtained a verdict in his favour for 1,000*l.* damages. The Chief Justice Willes, moreover, informed him that he was at liberty to bring his action against any of the other members of the court-martial (a). Accordingly Lieutenant Frye obtained writs against Rear-Admiral Mayne and Captain Renton, which were served on them at the breaking up of another court-martial held on Vice-Admiral Lestock at Deptford of which they were members. Damages recovered by Lieut. Frye.

43. The members of this court highly resented this proceeding, and drew up resolutions, in which they expressed themselves with some acrimony against the Chief Justice, and forwarded them to the Lords of the Admiralty. In these resolutions they demanded "satisfaction for the high insult on their president, from all persons how high soever in office, who have set on foot this arrest, or in any degree advised or promoted it." The Lords of the Admiralty laid the resolutions before His Majesty; and the Duke of Newcastle, by His Majesty's command, wrote to the Lords of the Admiralty, expressing "His Majesty's great displeasure at the insult offered to the court-martial, by which the military discipline of the navy is so much affected; and the King highly disapproves of the conduct of Lieutenant Frye on the occasion." Sequel of this case.

44. The Chief Justice, as soon as he heard of the resolutions of the court-martial, caused each individual member to be taken into custody, and was proceeding further to assert and maintain the authority of his office, when the following submission (signed by the president and all the members of the court-martial on Vice-Admiral Lestock) was transmitted to him: "As nothing is more becoming a gentleman than to acknowledge himself to be in the wrong, so soon as he is sensible he is so, and to make satisfaction to any person he has injured: we therefore whose names are underwritten, being thoroughly convinced that we were entirely mistaken in the opinion we had conceived of Mr. Chief Justice Willes, think ourselves obliged Vindication by the Chief Justice of his authority.

(a) This dictum of the Chief Justice cannot be considered law. From *Brinsmead v. Harrison*, L. R. 7 C. P. 547, it seems to be conclusively settled that a judgment obtained in an action against one or two or more wrongdoers is a bar to an action against the others for the same cause, even though the judgment remains unsatisfied. The injured party can, however, sue all the wrongdoers together in the first instance; and if he only sues one, the court has power to make the others parties to the action.

CH. VIII. in honour, as well as justice, to make him satisfaction as far as is in our power. And as the injury we did him was of a public nature, we do in this public manner, declare, that we are now satisfied the reflections cast upon him in our resolutions of the 16th and 21st of May last, were unjust, unwarrantable, and without any foundation whatsoever: and we do ask pardon of his Lordship and of the Court of Common Pleas, for the indignity offered both to him and the Court." This paper was dated the 10th November, 1746, and on its reception in the Court of Common Pleas was read aloud and ordered to be registered "as a memorial," said the Chief Justice, "to the present and future ages, that whosoever set themselves up in opposition to the law or think themselves above the law, will in the end find themselves mistaken."

Observation
of Law-
rence J.

45. It was observed with respect to this case by Lawrence J., in *Warden v. Bailey* (a), that Lieutenant Frye did not appear to have been legally imprisoned at first, because the matter charged against him did not amount to any offence.

Illegal im-
prisonment
by president
of court-
martial.

46. In 1804, Colonel More brought an action against Colonel Bastard, the president of a court-martial, for having ordered his imprisonment on the charge of having suborned a witness before the court. Colonel More was also a witness. He obtained a verdict with 300*l.* damages Lord Mansfield remarking that a court-martial has no power of imprisoning a witness except for impropriety of conduct (b).

Illegal com-
mand by
superior
officer.

47. In the case of *Warden v. Bailey* (c) it was decided that an action lies for imprisoning a man for disobedience to an order given without jurisdiction by his military superior.

Warden v.
Bailey, 1810.

48. Warden was a permanent serjeant of the Bedford militia, and, in common with the other non-commissioned officers of the regiment, was ordered by the colonel to attend an evening school, and to pay 8*d.* a-week towards the expenses of the school. Having neglected to obey this order, Warden was reprimanded for his conduct, and was afterwards, by direction of the adjutant, arrested and imprisoned in Bedford gaol, and subsequently tried by court-martial for mutinous words spoken on parade, and for thereby exciting others to disobedience, but was acquitted, and liberated in March, 1810. On this he

(a) 4 Taunt. 76.

(b) *More v. Bastard*, cited in *Warden v. Bailey*, 4 Taunt. 70. In an action brought at Calcutta in 1841, a reporter recovered nominal damages against the president of a court-martial for having ordered the forcible seizure of his notes, which he had persisted in taking after being ordered to desist. *Ricketts v. Walker*, Hough, Mil. Precedents 718.

(c) 4 Taunt. 67.

brought his action against the adjutant, but was non-suited by Grose, J., on the ground that after the decision in *Sutton v. Johnstone* (a), he could not try the question of the propriety of the arrest.

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49. This non-suit was set aside by the Court of Common Pleas, and a new trial granted, the court thinking that the order to attend school was most probably bad in law, and the order for payment of money certainly so. The case is most material as an instance of a court of law considering whether an order given by military authority is or is not within the scope of that authority; and as discountenancing the duty of absolute obedience in a soldier enunciated in *Sutton v. Johnstone* (b).

Non-suit set aside, and new trial granted.

50. In the recent case, however, of *Dawkins v. Rokeby* (c), the unanimous opinion of ten judges, sitting in the Exchequer Chamber, is distinctly expressed, that cases involving questions of military discipline and military duty alone, are cognisable only by a military tribunal, and not by a court of law; and *Warden v. Bailey* is distinguished, on the ground that the act there complained of was a wrongful and illegal act, without any colour of law. The distinction cannot be considered quite satisfactory, as, in order to decide that the act was illegal, the court must have gone more or less into questions of military discipline and duty.

Opinion of the Exchequer Chamber in *Dawkins v. Rokeby*.

51. Where the sentence was legal, but the prisoner has been imprisoned in a place to which he was not legally committed, the keeper of the prison and the person who issued the warrant will both be liable; and any officer commanding will also be liable in respect of the issue of the warrant by a subordinate officer for whom he is responsible (d); notwithstanding the ordinary rule, that where the superior did not appoint the subordinate officer, he is not responsible for the acts of that officer.

Illegal execution of sentence.

(a) See below, para. 67.

(b) See in particular the argument on the part of the defendant, which enunciated the doctrine of absolute obedience, and was virtually overruled by the court. The court, however, expressed a strong wish that the case should not be tried again, saying that "disputes respecting the extent of military discipline are greatly to be deprecated, especially in time of war; they are of the worst consequences, and such as no good subject will wish to see discussed in a civil action: they ought only to be the subject of arrangement between military men." The result of the new trial was that the plaintiff obtained a verdict, but this verdict was afterwards set aside by the Court of Error, and judgment entered for the defendant on the ground that Warden was in fact imprisoned for the use of mutinous language, and that there was probable cause for the imprisonment which justified the defendant.—*Bailey v. Warden*, 4 M. & S. 400. As to probable cause, see *Sutton v. Johnstone*, below, para. 67.

(c) L. R. 8 Q. B. 255: aff. L. R. 7 H. L. 744.

(d) See the case of Lieut. Allen above, who subsequently recovered 50*l.* damages against the Governor of the military prison at Weedon. *Allen v. Boyle*, "Times," March 4, 1861; but see now s. 172 (4) of the Army Act.

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Excessive
corporal
punish-
ment.

52. In several cases heavy damages have been recovered in respect of the unauthorized infliction of corporal punishment. Thus a seaman recovered damages in an action against Captain Tonyn, R.N., for the infliction of several dozen lashes without a court-martial; the custom of the navy only permitting a commanding officer to inflict summarily one dozen lashes (a).

A similar action was brought against Colonel Bailey of the Middlesex Militia for improperly flogging a private, and 600*l.* damages were awarded. And in an action tried in 1793 at the Devon Assizes against the officers of the Devon Militia for inflicting 1,000 lashes on the plaintiff, who had been found guilty of a charge of mutiny, though the only act proved against him was that he had written to the colonel a letter telling him that the men were discontented, which was not communicated to anyone else, the plaintiff recovered 500*l.* or 600*l.* damages (b).

Trial by
court-
martial of
civilian.

53. Officers who are instrumental in dealing with a person not subject to military law as if he were so subject, clearly are liable to make reparation to the person aggrieved. This was illustrated as early as 1738 by the case of *Comyn v. Sabine* (c).

Comyn was a master carpenter of the office of ordnance at Gibraltar, and brought an action against the Governor-General Sabine for having confirmed the sentence of a court-martial which awarded him the punishment of 500 lashes. It was shown that the carpenters of the office of ordnance were not subject to military law, and the jury found the Governor to be liable, as having had a share in the sentence, and gave 500*l.* damages. Lord Mansfield, citing the case in *Mostyn v. Fabrigas* (d), said, "The Governor was very ably defended, but nobody "thought the action would not lie."

Further
instances of
actions by
civilians.

54. The following cases are further instances of civilians recovering damages from officers in respect of a mistaken and unjustifiable exercise of their military authority.

In *Glyn v. Houstoun* (e) Mr. Glyn, a British merchant residing at Gibraltar, recovered 50*l.* damages from General Sir William Houston, the acting Governor, for having caused Mr. Glyn's premises to be surrounded with a detachment of troops, while a house immediately adjoining was searched for the person of Torrijos, a Spanish general; and for having during the search (which was unsuccessful) prevented Mr. Glyn from leaving his house by placing a sentinel with fixed bayonet at the door.

(a) Prendergast, *Law relating to Officers of the Navy*, 2nd edn., p. 185.

(b) Cited in *Warden v. Bailey*, 4 Taunt. 70.

(c) Cited in *Mostyn v. Fabrigas*, 1 Smith Lead Ca., 7th edn. 670, 679.

(d) 1 Smith Lead. Ca., 7th edn. 679.

(e) 2 Man. and Gr. 337.

In *Goode v. Lieutenant-Colonel Wheatly* (a), the plaintiff was doing duty as constable at St. James's Palace, and had occasion to desire Lieutenant-Colonel Wheatly, of the Guards, who was not in uniform, to walk on, whereupon Colonel Wheatly marched Goode off to the guard-room by a file of grenadiers, and confined him there several hours. The plaintiff was nonsuited, but, it would appear, solely in consequence of a failure in the proof of his appointment as a constable for St. James's parish.

In a case where the captain of an East Indiaman, on two strange sails (supposed to be enemies) being descried, mustered all hands and passengers, and assigned them stations for the defence of the ship, and the plaintiff, one of the passengers, refused to go to his station, and was thereupon, by order of the captain, carried there and kept in irons all night, it was held by Lord Ellenborough that though the captain might have been justified in confining the plaintiff for his refusal to obey orders, yet he had exceeded his authority in keeping the plaintiff in irons all night, and the jury gave 80*l.* damages (b).

55. Where an act complained of is itself unlawful, *bona fides* or honesty of purpose is no excuse, as appears from two cases cited by Lord Mansfield in *Mostyn v. Fabrigas* (c). Captain Gambier, by order of Admiral Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the sailors frequenting them with spirituous liquors, whereby their health was injured. One of the sutlers came over to England, and brought an action against Captain Gambier, in which he recovered 1,000*l.* damages. The second case cited by Lord Mansfield, in which Admiral Palliser was sued for destroying some fishing huts erected by Canadians on the Labrador coast, went off upon a reference; but it does not seem to have been questioned that the action lay.

Bona fides
does not
excuse an
illegal act.

56. The right to bring an action in the courts of this country in a case where the cause of action arose abroad does not seem to have been conclusively established till the decision in 1774 of *Mostyn v. Fabrigas* (d).

Immaterial
that cause
of action
arose
abroad.

57. Fabrigas, a native of Minorca, brought an action against General Mostyn, Governor of that island, for having, without trial, imprisoned and banished him from the island, and recovered 3,000*l.* damages. On a bill of exceptions, the point that where the cause of action arises abroad, the courts of this country have no jurisdiction, was

Mostyn v.
Fabrigas,
1774.

(a) 1 Campbell, 231.

(b) *Boyce v. Bayliffe*, 1 Campbell, 58.

(c) 1 Smith Lead. Ca., 7th edn. 686-8.

(d) 1 Smith Lead. Ca., 7th edn., p. 658. For historical sketch of the law relating to venue, formerly of much greater importance than at present, see p. 688.

(M.L.)

Ch. VIII. — elaborately argued; but Lord Mansfield, delivering the judgment of the court, emphatically laid down that actions of this description may be brought in England, though the matter arises in foreign parts. He also, with no less emphasis, repudiated the argument addressed to him, that the defendant was entitled to protection from an action by reason of his character as Governor.

Members of courts-martial not liable for mere errors of judgment.

58. For mere errors of judgment, members of a court-martial cannot be made responsible any more than civil judges and magistrates. "Even inferior justices and those not of record," says Lord Tenterden, in *Garnett v. Ferrard* (a) "cannot be called in question for an error of judgment so long as they act within the bounds of their jurisdiction. In the imperfection of human nature it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraints and apprehensions on the part of those who are to administer it. Corruption is quite another matter, so also are neglect of duty and misconduct in it. For these, I trust, there is, and always will be, some due course of punishment by public prosecution."

Abuse of military authority.

59. Notwithstanding the reluctance of the courts of law to interfere with the exercise of military authority over those subjected to military law, and though (speaking generally) all acts done in the course of military duty are justified—yet if military authority is exercised with excessive severity, oppression, or cruelty, so that the exercise, in fact, amounts to an abuse of jurisdiction, then the justification is destroyed, and the person injured may recover damages (b).

Wall v. Macnamara.

60. Thus, in *Wall v. Macnamara* (c), the plaintiff, a captain in the African Corps, brought an action against the Lieutenant-Governor of Senegambia for imprisoning him for nine months at Gambia, in Africa. The defence was a justification of the imprisonment under the Mutiny Act, for disobedience of orders. At the trial it appeared that the imprisonment of Captain Wall, which was at first legal—namely, for leaving his post without leave from his commanding officer, though in a bad state of health—had

(a) 9 Dowl. and R. 657. See also *Scott v. Stansfield*, L. R., 3 Exch. 220, where the law is laid down in similar terms.

(b) See the judgment of the Court of Exchequer delivered by Baron Eyre in *Sutton v. Johnstone*, 1 T. R. at p. 504: "And one may observe in general in respect of what is done under powers incident to situations, that there is a wide difference between indulging to situation a latitude touching the *extent* of power, and touching the *abuse* of it. Cases may be put of situations so critical that the power ought to be unbounded; but it is impossible to state a case where it is necessary that it should be abused, and it is the felicity of those who live under a free constitution of government that it is equally impossible to state a case where it can be abused with impunity."

(c) Cited in *Sutton v. Johnstone*, 1 T. R. 536.

been aggravated with many circumstances of cruelty. Ch. VIII.
 Lord Mansfield, in summing up, said, "In trying the legality of acts done by military officers in the execution of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if their intention appears by the evidence to have been upright. . . . Thus the principal inquiry to be made by a court of justice is, *how the heart stood?* and if there appears to be nothing wrong there great latitude will be allowed for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, and oppression appear to have occasioned or aggravated the imprisonment or other injury complained of, they shall not cover themselves with the thin veil of legal forms, nor escape under cover of a justification, the most technically regular, from that punishment which it is your province and your duty to inflict on so scandalous an abuse of public trust. It is admitted that the plaintiff was to blame in leaving his post, but there was no enemy, no mutiny, no danger, his health was declining, and he trusted to the benevolence of the defendant to consider the circumstances under which he acted. But supposing it to have been the defendant's duty to call him to a military account for his misconduct, what apology is there for denying him the use of the common air, in a sultry climate, and shutting him up in a gloomy prison, where there was no possibility of bringing him to trial for several months, there not being a sufficient number of officers to form a court-martial? These circumstances, independent of the direct evidence of malice, as sworn to by one of the witnesses, are sufficient for you to presume a bad, malignant motive in the defendant, which would destroy his justification, had it even been within the powers delegated to the defendant by the commission." The jury found a verdict for Captain Wall, with 1,000*l.* damages (a).

61. If an officer is exercising a legal jurisdiction possessed by him, he can, as a rule, only render himself liable to an action by exercising it with such circumstances of undue severity and oppression as to justify a jury in inferring malice. There are, however, one or two cases from which it would appear that even where injustice or oppression is the result of mere carelessness, and not of any bad intention, the officer guilty of such conduct may be held liable.

Where jurisdiction exists, action only lies if malice can be inferred.

62. Captain Molloy, of Her Majesty's ship Trident, kept *Swinton v. Molloy.*

(a) As to criminal liability for abuse of authority, see below, para. 91, *et seq.*

Ch. VIII. the purser Swinton in confinement for three days without inquiring into the case, and then, on hearing his defence, released him. The purser brought an action against Captain Molloy, and on the evidence Lord Mansfield said that such conduct on the part of the captain did not appear to have been a proper discharge of his duty, and, therefore, that his justification under the discipline of the Navy had failed him. It does not appear from the citation of this case in the Term Reports what the verdict in this case was (a).

Custom of the service may be a justification.

63. On the other hand, the custom of the service, if not inconsistent with the law of the land, may be a justification of an act done in pursuance of such custom. For example, in an action by a midshipman against his first lieutenant for having caused him, on his refusal to go to the mast-head, to be hoisted thither by a party of seamen, mast-heading was proved to be a customary punishment of the service, and the Chief Justice ruled that it was a justification (b).

Grant v. Shard.

64. In *Grant v. Shard* (c) violent language and striking a subordinate officer on duty were held actionable. Grant was directed to give a military order, and it appeared that he sent two persons, who failed. Shard thereupon said to Grant, "What a stupid person you are," and twice struck him. Although the circumstances occurred in the actual execution of military service, it was held that the action was maintainable, and a verdict was found for the plaintiff, with 20*l.* damages. An application was afterwards made to the Court of King's Bench to set aside the verdict, but the court, after argument, refused to disturb it, though Lord Mansfield was desirous to grant a new trial. The above cases of *Swinton v. Molloy* and *Grant v. Shard* are no doubt strong ones, and it would probably be now held in similar circumstances that the aggrieved person could only seek redress at the hands of the military authorities.

Civilians protected against abuse of military authority.

65. Civilians will always be protected by courts of law against the arbitrary and oppressive exercise of military jurisdiction (d).

Thus, *Sutherland v. Murray* (e) was an action brought in 1783 by Mr. Sutherland, a judge in Minorca, against General Murray for improperly suspending him from his

(a) *Swinton v. Molloy*, cited in *Sutton v. Johnstone*, 1 Term Reports, 537. Prendergast, *Law relating to Officers of the Navy*, Part II, 374, cites another very similar case which occurred in 1823.

(b) Prendergast, Part II, 377.

(c) Cited in *Warden v. Bailey*, 4 Taunton, at p. 85.

(d) See paras. 53-55 above.

(e) Cited in *Sutton v. Johnstone*, 1 Term Reports, 538. The facts of this case are not very fully or clearly given in 1 T. R.; and it may be questioned whether it does not more properly belong to the class of cases next referred to.

office. The General had professed himself ready to restore the judge on his making a particular apology ; and on reference to the home authorities the King approved of the suspension unless the Governor's terms were complied with. It was admitted that General Murray had power to suspend the judge for proper cause ; yet on the proof of his having unreasonably and improperly exercised that authority, and notwithstanding the King's approbation of his proceedings, damages to the amount of 5,000*l.* were awarded against him by the jury.

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66. The class of cases last referred to occupy a sort of intermediate position between cases where the act complained of is done without jurisdiction, and the cases where an act, in itself a legal exercise of military authority towards a person subject to military law, is charged as done maliciously and without probable cause.

Acts complained of as done maliciously and without probable cause.

67. In this latter class of cases no action can be maintained, unless the plaintiff avers and proves that the act complained of was done without probable cause (a). This proposition was laid down by Lords Mansfield and Loughborough in 1786 in the great case of *Sutton v. Johnstone* (*Johnstone v. Sutton*, in error) (b), and has never since been disputed.

Sutton v. Johnstone, 1786.

The circumstances of *Sutton v. Johnstone* were as follows :—The plaintiff Sutton was captain of Her Majesty's ship *Isis*, which formed part of a squadron under the command of the defendant Johnstone. On the 16th April, 1781, there being war between the United States and the French on the one hand, and the English on the other, the defendant Johnstone ordered the ships under his command to pursue the French fleet, and signalled to Sutton to slip his cable in order to engage the enemy. Sutton having failed to slip his cable, the defendant Johnstone caused him to be brought to a court-martial on the ground of his having "delayed and discouraged the public service on which he was ordered," and for disobedience of orders in not slipping his cable and putting to sea. Sutton admitted on the trial by court-martial that he had disobeyed the orders, but averred that he did not wilfully and willingly disobey them by reason that he was physically incapable of obeying them. The court-martial found that Sutton was justified in not immediately slipping his cable owing to the state in which his ship was, and that he did not delay the public service, and adjudged him to be honourably acquitted. Upon this, Sutton brought an action against Johnstone for having maliciously and without probable

(a) This expression is used in the judgments in *Sutton v. Johnstone*, and throughout this chapter, as equivalent to "reasonable and probable cause."

(b) 1 T. R. 493, 784 ; 1 Bro. Parl. Ca. 78.

Ch. VIII. cause charged him with the crime of disobedience of orders and the delay of the public service.

Questions raised in this case.

68. Practically, two important questions were raised in the case. First, whether an action for malicious prosecution would lie by a subordinate officer against his superior officer for an act done in the course of discipline and under powers incident to his situation; secondly, whether, supposing such an action would lie, Johnstone had or had not probable cause for charging the plaintiff with disobedience to his orders and delaying the public service, and therefore for bringing him to a court-martial.

Result of trials, and decision of Court of Exchequer.

69. The case was twice tried before the Chief Baron at Guildhall, and the plaintiff Sutton recovered 5,000*l.* damages on the first trial and 6,000*l.* on the second. A motion was then made in the Court of Exchequer in arrest of judgment, and upon this two points were raised; first, whether the action would lie; secondly, whether if it did lie, the plaintiff was entitled in law to keep the verdict. The Court of Exchequer decided that the action would lie, on the ground apparently (p. 504) that "all men hold their situations in this country upon the terms of submitting to have their conduct examined and measured by that standard which the law has established."

The court further decided that the plaintiff was entitled in law to hold his verdict on the grounds (p. 507), that, admitting for the sake of argument, that probable cause appeared for the charge of *disobedience*, yet no probable cause appeared for the charge of *delaying the public service*, of which the plaintiff had been acquitted by the court-martial, and that this was enough to support the verdict. The court observed:—

"The plaintiff charges the defendant with having maliciously and without probable cause brought the plaintiff to a court-martial upon one charge" (that of delaying the public service), "for which there was not a probable cause, and upon another charge" (that of disobedience of orders), "for which there was probable cause. The declaration is therefore *felo de se* with respect to the latter, but good as to the former. In that case, after a verdict, the jury must be taken to have given damages for that part of the case only which is actionable." The rule therefore for arresting the judgment was discharged.

Reversal of decision of Court of Exchequer by Exchequer Chamber.

70. Shortly afterwards Johnstone brought a writ of error in the Exchequer Chamber, and the judgment of the Court below was reversed. Taking the second point first, whether there was or was not probable cause for bringing Sutton to a court-martial, the court, Lords Mansfield and Loughborough, stated (p. 547):—

"Under all these circumstances,—it being clear that the orders were given, heard, and understood, that in fact they

were not obeyed, that by not being obeyed the enemy were enabled the better to sail off, that the defence was an impossibility to obey (a most complicated point)—under all these circumstances we have no difficulty to give our opinion that in law the commodore (Johnstone) had a probable cause to bring the plaintiff (Sutton) to a fair and impartial trial" (a). The court further declared that "nothing less than a physical impossibility to obey could be a justification. A subordinate officer must not judge of the danger, propriety, expediency, or consequence, of the order he receives; he must obey. Nothing can excuse him but a physical impossibility. A forlorn hope is devoted, many gallant officers have been devoted, fleets have been saved and victories obtained by ordering particular ships upon desperate services with almost a certainty of death or capture" (p. 546). Ch. VIII.

On the first point whether the action would lie, the court observed (p. 550) that it was not necessary to give judgment, because supposing the action did lie the court thought judgment ought to be given for the defendant. The court, however, was inclined to lean against the action lying, on the ground that a Commander-in-Chief has a discretionary power by the sea military code to put any man in the fleet upon his trial, that a court-martial alone can judge of the charge, that if the power of the Commander-in-Chief was abused, such an abuse was provided against by the 33rd Article of War, and that a commander who arrested, suspended, or put a man on his trial without probable cause might be tried by court-martial and punished accordingly.

The court said :—"Commanders in a day of battle must act upon delicate suspicions, upon the evidence of their own eye; they must give desperate commands, they must require instantaneous obedience. In case of a general misbehaviour they may be forced to suspend several officers and put others in their places. A military tribunal is capable of feeling all these circumstances, and understanding that the first, second, and third part of a soldier is obedience; but what condition will a commander be in if upon the exercising of his authority he is liable to be tried by a common law judicature? If this action is admitted, every acquittal before a court-martial will produce one. Not knowing the law or the rules of evidence, no commander or superior officer will dare to act; their inferiors will insult and threaten them. The relaxation and decay of discipline in the fleet has been severely felt. Upon an

(a) It is settled that what constitutes probable cause is a question to be determined by the Judge on the facts found by the jury. *Lister v. Perryman*, L.R., 4 H L., 521.

battle there are mutual recriminations, as, and mutual trials; the whole fleet take at animosity, party prejudices mix. If every followed by an action, it is easy to see how confusion, how infinite the mischief will be. Justly accused is not without his remedy: perest amongst military men; reparation is by an acquittal, and he who accused him stood for ever and dismissed the service."

sent of the Court of Exchequer Chamber was the House of Lords (*a*).

an action by a person subject to military against an officer for an act within the limits, where the plaintiff avers and proves that acted maliciously and without probable question on which judicial opinion has been *on v. Johnstone* (*b*), cannot be taken as *de bono* that in that particular case there was (*c*), but Lords Mansfield and Loughborough led to the view that such an action would not *Warden v. Bailey*, Lawrence, J., said (p. 74) *soning* was not approved by the House of *skins v. Paulet* (*d*) the view that the action explicitly affirmed by Mellor and Lush, J.J., *reed Hayes, J.*; while Cockburn, C.J., as *ted* it.

ne side it is urged—(i) that probable cause military question which can only be proved by a military tribunal skilled in military customs; (ii) that great detriment to the result if officers were to be exposed to *pect* of the mode in which they do their *refere* on grounds of public policy such

2a. 76. *Barwis v. Keppel*, 2 Wils. 314, decided in 1766, reports the decision. Barwis, a discharged sergeant of ed a verdict with 70*l.* damages against Major Keppel, *ler* of the regiment, for maliciously and without any *ble* cause reducing the plaintiff to the rank of a of duty during the campaign of the King's forces in *ince Ferdinand* in 1761. Let on a case reserved for Court said: "By the Act of Parliament to punish *tion* the King's power to make *Articles* of War is *dominions*; when his army is out of his dominions, *f* his prerogative and without the statute or *Articles* *fore* you cannot argue upon either of them, for they *out* of this case, and *flagrante bello*, the common law *d* with the army: *inter arma silent leges*. We think *sed* we have no jurisdiction at all in this case; but if *sel* think proper to speak more fully in this matter, *ear* him."

ter adds, "plaintiff, seeing the opinion of the court *iesced*, and the judgment was for the defendant, *ut*

34.

Bailey, 4 Taunt. at p. 89.

34.

actions ought not to be allowed; (iii) that a man on entering the army subjects himself to military law, and if he conceives himself wronged by a superior officer acting within the limits of his jurisdiction can look only to the means of redress by military authority, which military law itself provides (a). Ch. VIII.

73. To this it is replied—(i) that the incompetency of juries when assisted by professional evidence to form professional judgments cannot be admitted; nay, more, that the competency or incompetency of the civil tribunal ought not to form an element in the decision of the question (b); (ii) that a court of law ought not, in the absence of positive enactment or binding authority, to refuse redress in a case of admitted wrong on grounds of public policy;—that in fact the supposed inconvenience is greatly exaggerated, as men of honour would do their duty fearless of consequences; and that the argument from public policy would apply equally to actions of trespass for excess of jurisdiction, which it is conceded will lie (c); and (iii) that a man by entering the army does not forego the rights afforded to him by civil law, save where that law conflicts with military law; and further that no military authority or tribunal can make reparation by damages, whatever may be the extent of the injury inflicted (d). Arguments that action does lie.

74. It is certainly more in accordance with general principles to hold that there is no *absolute* exemption from liability of superior military officers; and that if a superior officer without probable cause and with malice orders or procures the arrest or prosecution of a subordinate, he may become liable to pay damages in an action by the subordinate. The opinions of Lords Mansfield and Loughborough were, it is to be recollected, expressed with reference to a state of war and to facts involving technical questions on which civilians could scarcely form an opinion; and though it is not easy to conceive a case where a court of law would interfere with an arrest or prosecution arising out of a battle or sudden emergency, yet the decisions as they stand do not go so far as to justify the proposition that in all circumstances the exemption of the superior General result.

(a) See the judgments of Lords Mansfield and Loughborough in *Sutton v. Johnstone*, 1 T. R. p. 544; of Willes, J., in *Dawkins v. Lord Rokely*, 4 F. and F., 806; of Mellor and Lush, J.J., in *Dawkins v. Faulet*, L. R., 5 Q.B. 94, and of the Exchequer Chamber in *Dawkins v. Lord Rokely*, L. R. 8 Q.B. at p. 271. As to redress by military authority, see ss. 42 and 43 of the Army Act, which extend the provisions of the former Articles of War, 12 and 13, in favour of the soldier.

(b) See the judgment of Cockburn, C. J., in *Dawkins v. Faulet*, L. R. 5 Q.B. at p. 109; *Sutton v. Johnstone*, at p. 538.

(c) *Per* Cockburn, C. J., in *Dawkins v. Faulet*, at p. 110; and see the judgment of the Court of Exchequer delivered by Baron Eyre in *Sutton v. Johnstone*, 1 T. R. at p. 502.

(d) *Per* Cockburn, C. J., in *Dawkins v. Faulet*, at p. 110.

Ch. VIII. officer is absolute (a). It may be added that there can be no action for causing a prosecution before a court-martial, unless there has been an acquittal by the court-martial, or its finding has been quashed or reversed; but an acquittal is not *conclusive* evidence that there was no probable cause for instituting the prosecution.

Actions for libel.

75. For statements made by an officer in the discharge of his military duty, even though the statements are made maliciously and with the knowledge that they are false, it has in one case been held that an action for libel will not lie (b).

Dawkins v. Paulet.

The above-mentioned case of *Dawkins v. Paulet* was an action of this description brought by Lieutenant-Colonel Dawkins against Major-General Lord F. Paulet in respect of certain statements and reports regarding the military conduct and qualifications of the plaintiff, forwarded by the defendant in the ordinary course of military duty, to the Adjutant-General for the information of the Commander-in-Chief. The case was decided on demurrer, a proceeding in which the court, for the purposes of argument only, assumes the truth of the allegations of the plaintiff, and therefore in this case assumed for that purpose only, that the statements (admittedly made in the course of military duty) were made maliciously and with the knowledge that they were false, and, as already stated, it was held, Cockburn, C.J., dissenting, that the action would not lie. But if the same question were raised in a less technical form, it might be difficult to maintain that statements if made maliciously and with a knowledge of their falsity could be considered as made in the course of military duty.

Jekyll v. Moore.

76. In *Jekyll v. Moore* (c) the plaintiff brought an action for libel against Sir John Moore, who had been the president of a court-martial held for the trial of Colonel Stewart of the 43rd Regiment. The court "most fully and honourably" acquitted Colonel Stewart, and appended to this finding the following remarks:—"The court cannot pass without observation the malicious and groundless accusa-

(a) In *Keighley v. Bell*, 4 F. and F. 763, the report is obscure, but in one passage Willes, J., appears to have thought that an action for false imprisonment would lie, if the imprisonment were occasioned by the superior officer, not in the discharge of ordinary military duty, but maliciously and without probable cause. See on the other hand, the judgment of the Court of Exchequer Chamber in *Dawkins v. Lord Rokeby*, already cited.

(b) *Dawkins v. Paulet*, L. R. 5 Q. B. 94; and see the other cases cited below. In *Mitchell v. Kerr*, Rowe's Rep. 537, decided by the Court of King's Bench in Ireland in 1801, the defendant had written two libellous letters to the commanding officer of a regiment which the plaintiff was about to enter. At the trial the jury were directed that, if they thought the letters were written merely for the purpose of bringing the plaintiff to a court-martial, the action would not lie, and they found a verdict for the defendant, which the Court of King's Bench refused to disturb.

(c) 2 New Reports, 341.

tions that have been produced by Captain Jekyll against an officer whose character has, during a long period of service, been so irreproachable as Colonel Stewart's, and the court do unanimously declare that the conduct of Captain Jekyll in endeavouring falsely to calumniate the character of his commanding officer is most highly injurious to the good of the service." The Court of Common Pleas decided that no such action could be maintained, the Chief Justice Sir James Mansfield observing, "If it appear that the charges are absolutely without foundation, is the president of the court-martial to remain perfectly silent on the conduct of the prosecutor, or can it be any offence for him to state that the charge is groundless and malicious? It seems to me the words complained of in the case form part of the judgment of acquittal, and consequently no action can be maintained upon it."

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From this decision it would appear that comments by a court-martial censuring the conduct of a person in respect of a matter not before them would not be held privileged so as to exempt the members from an action (a).

77. The report made by a court of inquiry is absolutely privileged. In *Home v. Bentinck*, the plaintiff brought an action against the president of a court of inquiry for libel in publishing the contents of the report of the court, by communicating it to the Commander-in-Chief. The report contained these words, "The conduct of Lieutenant-Colonel Home does not appear to have been actuated by those high and delicate feelings of honour which in all transactions of life ought to influence an officer of high rank and reputation." The Court of Common Pleas were unanimously of opinion that the report was a privileged communication for which the officer making it could not be rendered responsible in a court of law; and that the officer who had been summoned to produce at the trial of the action the report in question and the proceedings of the court of inquiry was not bound nor even at liberty to disclose the documents in question, they being State documents and protected as such from exposure in courts of justice. This decision was confirmed on appeal to the Exchequer Chamber (b).

Report of court of inquiry privileged.

78. In this class of cases the question always is whether the libel, if it be a libel, is, to use the technical term, privileged. This question is very similar to that discussed above as regards want of jurisdiction. If the communication charged as libel was made by a court in the exercise of its jurisdiction, or by an advocate or witness before such a court, it is considered absolutely privileged, and no

Question to be determined in these cases that of privilege.

(a) See Prendergast, *Law relating to Officers of the Navy*, Part II, 405.

(b) 2 Broderip and Bingham, 130; 4 Moore, 563.

Ch. VIII. one is liable in respect of it. If it is made otherwise than in the exercise of the proper jurisdiction, it has been held not to be so privileged, but this can scarcely be considered as settled. If it is made by a person not as a judge or witness but in the discharge of his military duty, it is according to the case of *Dawkins v. Paulet (a)*, and subject to the observation made on that case (see para. 75), absolutely privileged. In any other case, if the statement is made in furtherance or under colour of any interest or duty, it is only *prima facie* privileged, and the privilege will be lost if actual malice or great excess is shown.

Malice held to take away privilege.

Dickson v. Wilton, sed qu.

79. In *Dickson v. Wilton (b)* Lord Campbell directed the jury that letters from the commanding officer of a regiment to his immediate superior containing charges against the Colonel, and a conversation with a member of Parliament as to a question to be put in the House of Commons relative to the dismissal of the Colonel on these charges, are *prima facie* privileged communications; but that if made from other motives than a sense of duty, which was a question for them to decide, the privilege would be gone. The jury found for the plaintiff with 205*l.* damages. This case however was never discussed on a motion for a new trial, and the Court of Exchequer Chamber observed, in *Dawkins v. Lord Rokeby (c)*, that the judge who tried it was wrong in compelling the production of the documents by the Secretary for War, and in ruling that malice might be inferred by the jury from the documents themselves without other evidence.

Dickson v. Combermere.

80. Again in *Dickson v. Combermere (d)* an action brought by the same plaintiff as in *Dickson v. Wilton*, not for libel, but for conspiring to obtain the removal of the plaintiff from his command by false charges, Chief Justice Cockburn told the jury that if the charges were in their opinion made without probable cause and maliciously, *i.e.*, apparently not in the course of military duty, they must find for the plaintiff; but in this case the verdict was for the defendant.

Publishing of sentence of court-martial not a libel.

Complaint to proper authorities not a libel.

81. Publishing the sentence of a court-martial to the effect that Colonel — is dismissed from the service for gross violation of the trust reposed in him as commanding officer of the Molucca Islands is not libellous (*e*).

82. Nor again is a proper complaint to a superior officer or to the Secretary of State or other authority having power to redress the matter complained of a libel. This was decided by the Court of King's Bench in *Rex v.*

(a) L. R., 5 Q. B. 94.

(b) 1 F. and F. 419.

(c) L. R. 8 Q. B. 255; 7 H. L. 744.

(d) 3 F. and F. 527.

(e) *Oliver v. Lord W. Bentinck*, 3 Taunt. 456.

Baillie (a), where the defendant, a Captain in the navy and Deputy Governor of Greenwich Hospital had written, and distributed among the Governors of the hospital a large volume containing an account of the abuses of the institution, and severely animadverting on the characters of some of its officers, especially Lord Sandwich, First Lord of the Admiralty. A conditional order obtained by Lord Sandwich for a criminal information against Captain Baillie for libel was discharged by the court; and Lord Mansfield said that this distribution of the work to the persons only who were from their situations bound and competent to redress the grievances in question, was not a publication sufficient to make it a libel. Ch. VIII.

83. In *R. v. Bayley* (b) and in *Fairman v. Ives* (c) letters had been written by the defendants to superior military authorities with the view of obtaining payment of debts due to them from the plaintiffs. In each case the circumstances of the alleged debt were stated, and fraud or concealment on the part of the plaintiff was alleged or suggested. It was held that the letters were not libels, being communications to the proper authorities having power to give redress of the alleged grievance. *R. v. Bayley.*
Fairman v. Ives.

84. On the other hand where a naval officer acting as government agent on board a transport wrote to Lloyd's imputing incapacity to the captain of the transport, it was held that the communication was not privileged, and the plaintiff recovered 50*l.* damages (d). The officer ought to have addressed his complaint to the Admiralty authorities. *Harwood v. Green.*

85. With regard to the privilege of witnesses, the decision of the Court of Exchequer Chamber in *Dawkins v. Lord Rokeby* (e) having been affirmed by the House of Lords is a conclusive authority that a court of inquiry held under the Army Act is to this extent a court, that the statements made, whether orally or in writing by witnesses summoned to give evidence are absolutely privileged, even though made with actual malice and without probable cause. It need scarcely be observed that evidence given before a court-martial is similarly privileged. Privilege of witnesses.

86. Negligence or unskilfulness in the discharge of professional duty may be actionable at the suit of a person injured by such negligence or unskilfulness. Actions for negligence.

(a) Holt on Libel, 172; 21 Howell's State Trials, 1.

(b) Bac. Abr. "Libel," A. 2.

(c) 5 Barn. and Ald., 642.

(d) *Harwood v. Green*, 3 Car. and P. 141.

(e) L. R. 8 Q. B. 255; 7 H. L. 744. It may be added that actions subsequently brought by Colonel Dawkins against certain members of the court of inquiry were stayed on the ground that they would not lie. *Dawkins v. Prince Edward of Saxe-Weimar*, L. R. 1 Q. B. D. 499.

Ch. VIII. 87. Thus in the case of *Weaver v. Ward* (a) decided in 1616, the plaintiff and defendant were both soldiers of the London trained bands, and while engaged in skirmishing by way of military exercise, Ward's musket was discharged in such a way as to wound Weaver, who thereupon brought an action of trespass against Ward. Ward's defence was that he was in training by order of the Lords of the Council, and skirmishing in obedience to military command, and that the injury happened casually, by misfortune and against his will. But this was decided not to be enough. The court said, "No man shall be excused a trespass except it may be judged utterly without his fault."

Weaver v. Ward.

88. In 1844 the commander of Her Majesty's ship *Volcano* was held liable in an action brought in the Court of Admiralty for damage occasioned by a collision between the *Volcano* and the brig *Helen*. Both vessels had sought shelter in the same bay off the coast of Spain, the *Volcano* taking up a berth near the *Helen*. During a storm at night the *Volcano* broke her anchor, came into collision with the *Helen*, and so damaged her that she sank. The court was of opinion that the *Volcano* was to blame, both in taking up her original berth and also in not letting out more cable and in not dropping a second anchor; and damages were accordingly recovered from the commander (b).

Case of
*H.M.S.
Volcano.*

Action by
foreigner.

89. British Courts of Justice are open to subjects of friendly nations, and it has been held that a Spaniard could recover damages for seizure and detention of a cargo of slaves by a captain in the navy (c).

Non-
liability for
hostile acts
done by
authority of
Government.

90. A British subject is not liable to actions by foreigners in respect of hostile acts done by him in the name of the Government which he serves, provided those acts are either authorised by an actual command or ratified by a subsequent approval of the Government. To such acts the maxim *respondet superior* appears to apply; and, if the Government refuses redress, there is no remedy but an appeal to arms (d).

(v.) *Liability to Criminal Proceedings.*

Liability to
criminal
proceed-
ings.

91. There are several authorities which show that where the death of a person is caused by some act of a military

(a) Hobart's Reports, 134.

(b) "*Volcano*," 2 W. Robinson's Admiralty Rep. 337.

(c) *Madrazo v. Willes*, 3 Barn and Ald. 353. Compare *Forbes v. Cochrane*, 2 Barn. and Cr. 448, in which case the plaintiff was a British subject.

(d) 1 Smith's Lead. Ca., 7th edn., 713-14, and authorities there cited. *Buron v. Denman*, 2 Exch. 167; *Feather v. Reg.*, 35 L. J. (N.S.), Q.B. 200, 4 B. and S. 257.

officer done without jurisdiction, the officer is criminally responsible. Thus on the case of an action against the officers of the Devon Militia above mentioned being cited in *Warden v. Bailey*, Mr. Justice Heath expressed his opinion that, if the plaintiff in that action had died under the punishment inflicted by order of the court-martial, all the members of the court would have been liable to be hanged for murder (a).

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92. In the well-known case of Governor Wall (plaintiff in the action already noticed of *Wall v. Macnamara*), the penalty of death was actually inflicted on Governor Wall for a crime resembling in its nature and circumstances the conduct towards himself in respect of which he recovered damages. This crime was the murder of Serjeant Benjamin Armstrong, of the African Corps, in 1782, by inflicting on him 800 lashes with such cruelty as to cause his death.

Case of Governor Wall, 1802.

93. Governor Wall appears to have been arrested on the charge shortly after his return to England, but to have absconded and kept out of the way for nearly twenty years, as he was not tried till 1802. The circumstances out of which the charge arose were as follows:—In July, 1782, Mr. Wall was in command of the garrison at Goree, an island on the coast of Africa, and about to leave for home. The men of the garrison had some pecuniary compensation then due to them in respect of their having been put on a reduced allowance of provisions, and the paymaster responsible for meeting their demands was to leave together with Governor Wall. On the day before that fixed for their departure, a number of men, headed by Armstrong, twice proceeded to the house of the paymaster to obtain a settlement of their accounts. According to the evidence for the prosecution, there was no appearance of any mutiny, and no disrespectful or disorderly conduct on the part of the men, who returned to barracks when ordered to do so by Governor Wall. In the afternoon Governor Wall ordered a parade, and by his order 800 lashes were inflicted on Armstrong by black men, not with the ordinary cat, but with a description of rope. It was stated that Governor Wall stood by urging the black men to increased severity with coarse expressions, such as "Lay on, you black —, or I'll lay on you; cut him to the heart." Armstrong died shortly afterwards in hospital. For the defence some evidence was given that the behaviour of the men, and in particular of Armstrong, had been mutinous, and that a sort of drum-head court-martial had been held which ordered the punishment; and that

Circumstances of this case.

(a) 4 Taunton, at p. 77.

VIII. the death of Armstrong was accelerated by drinking spirits in hospital.

94. Chief Baron Macdonald directed the jury that if there was no mutiny and no court-martial, and the punishment of 800 lashes with such an unusual instrument was ordered by the prisoner, there was certainly ground to infer malice; and pointed out that Governor Wall in his report of the state of the settlement on his return made no mention of the existence of any mutinous spirit in the garrison. The jury found the prisoner guilty, after deliberating for half an hour, and he was hanged at Tyburn (a).

95. A mistaken impression of duty will not excuse an officer, if he, without being justified by other circumstances, orders his men to fire, and some one is thereby killed, as is shown by the following case. In 1807 Ensign Maxwell, of the Lanarkshire Militia, was tried before the High Court of Justiciary in Scotland, for the murder of Cottier, a French prisoner of war at Greenlaw, by improperly ordering a sentinel to fire into the room where Cottier and other prisoners were confined. Ensign Maxwell had the military charge of over 300 prisoners, confined in a building of no great strength. The prisoners were of a turbulent character, and to prevent their escape an order was given that all lights in the prison should be put out at 9 o'clock, and that if this was not done at the second call the guard was to fire upon the prisoners, who were often warned of this order. Ensign Maxwell having observed one night, on which there had been some disorder among the prisoners, a light burning beyond the appointed hour, twice ordered it to be put out, and not being obeyed, directed the sentry to fire, but the musket merely snapped. Ensign Maxwell repeated the order, the sentry fired again, and Cottier received his mortal wound. At this time there was no symptom of disorder in the prison and the prisoners were all in bed.

96. The general instructions issued from the Adjutant-General's office for the conduct of the troops guarding the prison contained no such order as that upon which Ensign Maxwell had acted; and it appeared to be a mere verbal one which had from time to time in hearing of the officers been repeated by the corporal to the sentries on mounting guard, and had never been countermanded by those officers, who were also senior to Ensign Maxwell. The Lord Justice Clerk laid it down that Ensign Maxwell could only defend himself by proving specific orders, which he was bound to obey without discretion, and which called upon him to do what he did; and the jury found

(a) 28 Howell's State Trials, 51.

him guilty of the minor offence of culpable homicide, with Ch. VIII. a recommendation to mercy. He was sentenced to nine months' imprisonment (a).

97. Again in the case of *R. v. Thomas* (b) the prisoner, *R. v. Thomas.* a sentinel on board Her Majesty's ship *Achille*, had been ordered to keep off all boats unless they had officers in uniform in them, or unless the officers on deck allowed them to approach; and he received a musket, three blank cartridges, and three ball cartridges. The boats pressed, upon which he repeatedly called to them to keep off; but one of them persisted and came close under the ship, and he then fired at a man in the boat and killed him. It was put to the jury to find whether the sentinel did not fire under the mistaken impression that it was his duty, and they found that he did. But the case being reserved for the opinion of the judges, their Lordships were unanimous that it was murder. They thought it however a proper case for a pardon; and further, they were of opinion that if the act had been necessary for the preservation of the ship, as if the deceased had been stirring up a mutiny, the sentinel would have been justified.

98. How far a subordinate could plead the specific commands of a superior officer—such commands being not obviously improper or contrary to law—as justifying an injury inflicted on a citizen, is somewhat doubtful; though there are cases in which the fact of the orders having been given would no doubt prove the innocent intent of the subordinate, and lead practically to his acquittal on a criminal charge (c).

99. With respect to criminal liability for oppression and similar offences committed out of the realm it was enacted by 11 Will. III, c. 12 (d) that any governor or commander-in-chief of any colony beyond the seas guilty of oppression to any of His Majesty's subjects, or of any other crime within their respective governments or commands, might be tried and punished by the Court of King's Bench in England or by special commissioners. And the statute 42 Geo. III, c. 85. makes a similar provision for the trial and punishment of persons employed in the public service out of Great Britain in any similar military office or capacity (e).

(a) Buchanan's "Remarkable Cases," Part II, 3.

(b) Russell on Crimes, 5th edn., i, 732.

(c) See *R. v. Trainer*, 4 F. and F. 105; *Dawkins v. Lord Rokeby*, 4 F. and F. 806; *Keighley v. Bell*, 4 F. and F. 763; *R. v. Hutchinson*, 9 Cox Cr. Ca. 555.

(d) 11 & 12 Will. III, in Ruffhead.

(e) See also the two Acts 24 Geo. III, sess. 2, c. 25, s. 64, &c., and 26 Geo. III, c. 57, making elaborate provisions for the trial in Great Britain of British subjects for extortion and misdemeanors committed in India.

(M.L.)

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Case of Sir
Thomas
Picton,
1806.

100. General Sir Thomas Picton was tried under this Act in 1806 for having, while Governor of Trinidad, given an order for the infliction of torture on a female from whom it was desired to obtain evidence in support of a prosecution for a robbery committed in her master's house. General Picton's defence was that the occurrence took place in the ordinary course of judicial proceedings, over which he presided as Governor, and that torture was allowed in such cases by the law of the island. The case was tried twice, and was again elaborately argued on the special verdict found at the second trial, but judgment was never prayed (a). It appears, however, to have been thought at the time that had the opinion of the court been delivered, judgment would have been given against General Picton, though the jury found that by the law of Spain torture existed in Trinidad at the time of the cession of that island to Great Britain, and that no malice existed in the mind of the defendant, save so far as might be inferred from the acts complained of, if found to be illegal (b).

Execution
of sen-
tences, &c.

101. With respect to the question how far defect in the jurisdiction or procedure of the court by whom a sentence is given, or want of authority, irregularity, or excess in the person by whom the sentence is executed, may render the court or person executing the sentence criminally responsible, there is but little to be found in the books. There appears, however, to be authority for the following propositions :—

(i.) If, first, the court who passed the sentence had no colour of jurisdiction in the matter, all its proceedings are a mere nullity, and both the court and the officer who executed the sentence are mere wrong-doers ; and in the case of an execution the officer may perhaps in strictness of law be guilty of murder as a principal, and the members of the court may be guilty of a misdemeanor, and also as accessories to the murder (c).

(ii.) If, secondly, the court had no jurisdiction, but it acted under colour of a writ or commission, such as might lawfully be issued, then although the writ or commission be irregular and so the sentence erroneous and voidable, it seems that it is not a nullity, and that neither the court nor the officers who execute the sentence can be treated as mere wrong-doers, though the court may be guilty of a misprision (d). If, again, the court had jurisdiction, but passed an erroneous sentence, neither the judge nor an

(a) 30 Howell State Trials, 226.

(b) 30 Howell State Trials, 955, note.

(c) Hale, Pleas of the Crown, i. 497, 501.

(d) Hale, i. 497-509 ; Hawkins, Bk. i. ch. 28, s. 6.

officer who innocently executes the sentence is criminally liable (a). **Ch. VIII.**

(iii.) The sentence must be executed by the proper officer, and if any person who is not duly authorised executes it, he is a wrong-doer (b).

(iv.) The execution must pursue the judgment, subject to any lawful alteration by the Crown, for if a man is beheaded who ought to have been hanged, the officer is a wrong doer (c).

There appears to be no authority for applying the doctrine of trespass *ab initio* to the case of irregular execution of a sentence, and it would seem that the officer would be liable only for so much of his acts as is in excess of his authority. Malice (in the popular sense of the word) in the officer appears to be wholly immaterial, so long as he keeps within the limits of his authority, for he is bound to execute the sentence ; but if he grossly exceeds the measure of the sentence which he is authorised to inflict, and if he so barbarously flog a man sentenced to flogging as by plain excess to cause his death, he will be a wrong-doer as to the excess (d).

102. It remains only to notice that officers are to a certain extent protected against actions by s. 170 of the Army Act, which provides that an action against any person for any act done in the execution, or intended execution, of the Act, or in respect of any alleged default in the execution of the Act, must be commenced within six months. Tender of amends before the action may, in lieu of or in addition to any other plea, be pleaded. Such actions, as well as actions against members of a court-martial in respect of a sentence of such court, can only be brought in one of the superior courts in the United Kingdom (which courts have jurisdiction wherever the matter complained of occurred) or in a supreme court in India, or in a colonial court of superior jurisdiction in the colony where the matter occurred.

103. The statements of law in this chapter apply to England, but the law in Ireland, Scotland, and the colonies may be considered to be very similar.

(a) Hale i. 501.

(b) Hale i. 501, Coke, Inst. i. 128.

(c) Coke, Inst. iii. 52, 211 ; Hale ii. 501.

(d) Hawkins, Bk. i. ch. 20, s. 5, and see *Governor Wall's case*, *supra* p. 207.

CHAPTER IX.

HISTORY OF THE MILITARY FORCES OF THE CROWN.

- Object of chapter.** 1. The object of this chapter is to give a short summary of the history of the Military Forces, and principally of those in England. For details the authorities cited in the notes must be consulted (*a*).
- Two periods in history of forces.** 2. The history of the English Forces may be divided into two main periods: the one prior, and the other subsequent to the Restoration of Charles the Second in 1660. It was not until after 1660 that a Standing Army was raised, and the Militia organised under Act of Parliament. Before 1660 the organisation of the Forces was much less systematic, although it rested on laws which have come down to the present time, and therefore deserve notice.

First Period.—General and Feudal Levies.

- General liability to service in early times.** 3. Before the rise of the feudal system in England (*b*), as well as after, every man between the ages of 15 (*c*) and 60 capable of bearing arms was bound at his own expense to provide arms and appear to fight in his country, against both domestic and foreign foes; in other words, to aid in suppressing riots as well as in defending the realm against invasion.
- Double aspect of this service.** 4. This general levy of all able-bodied (*d*) men in each

(*a*) See Clode's *Military Forces of the Crown* (Murray, 1869) which contains many original authorities, chiefly for the period subsequent to 1660. For the earlier period many extracts from and references to original authorities are contained in Grose's *Military Antiquities*, and in Scott's *British Army*. The powers of the Crown for the defence of the realm are enumerated and discussed in the Ship Money Case (see especially St. John's argument), Howell's *State Trials*, iii. 825, summarised in Clode *Mil. Forces*, i. 354, 355. The constitution of the general levy and the feudal army, and the incidence of feudal tenure, are described in the ordinary histories, such as Hallam's *Middle Ages*, and *Constitutional History*; Lingard's *History*; Taswell Langmead's *Constitutional History* (1st edn.); and especially Stubbs' *Constitutional History* (1st edn.) and also in legal books, such as Coke on Littleton, and Blackstone's *Commentaries*.

(*b*) The date of the introduction of the feudal system is a matter of controversy; the system assumed its definite form in England after the Norman Conquest in the year 1066.

(*c*) In some cases the age mentioned is 16; this was one of the three requirements of the "*trinoda necessitas*," or threefold obligation, which lay on every owner of land; the other two being to maintain fortifications and repair bridges; Stubbs, *Const. Hist.*, i. 76, 85, &c.

(*d*) Stubbs, *Select Charters*, 362-6; Stubbs, *Const. Hist.*, i. 591, 592, ii.

county had a double aspect. As a civil force, it was known as the *posse comitatus*, which the sheriff was entitled to call on to arrest criminals and suppress riots; and the obligation to serve in it was closely connected with the obligation attaching to every man of keeping watch and ward, and of following the hue and cry, which was directed against criminals (a). In its other aspect it was a military force, and was called out, under the sheriff or some other officer of the Crown, to defend the realm in civil war, or against foreign foes. The force was liable to serve only in the kingdom, and, except in case of invasion, only in its own county. Sometimes it was called out in all the counties; at other times, in particular counties only, as, for instance, in the northern counties, to resist the Scots.

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5. The general levy was organised by divers statutes, which determined the arms, and in the case of the more wealthy, the horses which each man was to provide, in accordance with the amount of his land and goods. The sheriffs, mayors, and justices, as well as the constables annually appointed for the purpose in each hundred, were to enforce the obligation to serve and provide arms, and twice every year were to inquire into the arms provided, or as it was termed, to hold "views of armour." Writs were often addressed by the King to the sheriffs and others to array or summon before them the men liable to service (whom from being sworn to keep arms were called *jurati ad arma*), and to punish defaulters; and the writ often directed such arrayers, or other persons named in it, to lead the force on active service (b).

Organisa-
tion of
general
levy.

6. In the time of Edward the Sixth, we find lieutenants appointed in the counties to array, or lead, or both; and after the reign of Mary, such lieutenants, now commonly known as Lords Lieutenant, were usually appointed for those purposes (c).

Lieutenants
in counties.

280; Grose, *Mil. Antiq.*, i. 9; 13 Edw. I (Stat. Winton) st. 2, c. 6; 3 & 4 Edw. VI, c. 5; 1 Mar. sess. 2, c. 12; 1 Eliz. c. 16.

(a) It was known as the *ban* or *fyrð* or expedition, Stubbs, *Const. Hist.*, i. 76, 190-4, 591. See Commissions in Rymer's *Fœdera*.

(b) Hen. II, *Assize of Arms*; Stubbs, *Select Charters*, 146, and the statutes 13 Edw. I (Stat. Winton), st. 2, c. 6; 34 Edw. I, st. 2 in common editions; 2 Edw. III, c. 6; 5 Hen. IV, c. 3; 3 Hen. VIII, c. 3; 33 Hen. VIII, cc. 5, 9; 4 & 5 Phil. and Mary, c. 2. See also Acts referred to in the next note. See further, Grose, *Mil. Antiq.*, i. 2, 9, 74-96; Clode, *Mil. Forces*, i. 16, 345-57; Stubbs, *Select Charters*, 87, 272, 334, 362-366; Stubbs, *Const. Hist.*, i. 431-4, 581, 587-592, ii. 280-286; Writs in Rymer's *Fœdera* and Palgrave's *Parliamentary Writs*.

(c) See Acts 3 & 4 Edw. VI, c. 5, s. 13, 1 Mar. sess. 2, c. 12, s. 12; 4 & 5 Phil. and Mar. c. 3, 1 Eliz. c. 16. Clode, *Mil. Forces*, i. 32; Scott, *British Army*, i. 329, 348; Grose, *Mil. Antiq.*, i. 79. Strype (*Ecclesiastical Memorials* ii. 278), says that lieutenants were first appointed in 3 Edw. VI (1549), and were appointed annually. They are spoken of by Camden (*Britannia*, i. clxvii, clxxxix), as appointed in troublesome times, and by Holinshed (*Chronicles* i. 155), as appointed in time of necessity. They

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Right of
purveyance.

7. Closely connected with the general levy was the Crown's prerogative of purveyance, which enabled the Crown to enforce the supply of carriages, carpenters, smiths, and other artificers, as well as of victuals, for military purposes (*a*).

Distinction
between
general levy
resting on
allegiance,
and feudal
levy.

8. The obligation to serve in the general levy rested on every man as a citizen, or as it was termed, "on every man within the allegiance of the King." The general levy was therefore independent of the feudal levy, the obligation of which depended on homage or tenure under the King as feudal lord. The general levy probably constituted the larger part of the infantry; while the feudal levy consisted of the knights who, on horseback and in coat of mail, formed the most prominent feature of warfare in the Middle Ages. The knights' retainers served partly on horseback, partly on foot (*b*). The lancers and archers, however raised, were taken chiefly from the middle classes, and highly paid (*c*).

Feudal levy.

9. Under the feudal system, holders of land by the tenure of knight service were bound to attend the King at their own expense, mounted and armed, with their retainers. Such of these retainers as served on horseback were originally for the most part persons who had obtained land from their chief on the condition of rendering military service to him, just as that chief held the same land from the King on the same condition; but after 1289 (*d*) grants of land could only bind the holder to render service to the King or other superior lord, and not to the grantor of the land, and consequently the number of such retainers gradually diminished. The period of feudal service was limited to forty days in each year. Our earlier kings successfully demanded service abroad, as well as service at home; but as time passed the feudal tenants displayed increasing reluctance to serve out of the kingdom, and at length refused to do so (*e*).

Service by

10. Personal service formed the basis alike of the feudal

were also appointed for several counties. An abstract of the authority given to a lieutenant by his commission is to be found in Lodge's Illustrations of British History, ii. 325; see also 419 to 426; see also Scott, Brit. Army, i. 348. After 1660, they became statutory officers appointed for the militia, see below, para. 84.

(*a*) Stubbs, Select Charters, p. 350, and divers writs in Rymer's Fœdera; Stubbs, Const. Hist., ii. 283; Clode, Mil. Forces, i. 347. Grose, Mil. Antiq., i. 86. The Crown's right of purveyance was restrained by many Acts, and ultimately abolished by 12 Cha. II, c. 24.

(*b*) Grose, Mil. Antiq., i. 8, 120; Scott, Brit. Army, i. 119, 138.

(*c*) Hallam, Const. Hist., ii. 129; Stubbs, Const. Hist., ii. 280-5.

(*d*) By the statute known as "Quia Emptores" (18 Edw. I, c. 1), which while authorising the sale of lands, provided that the purchaser of land (called in the Act the feoffee) should hold it of the chief or superior lord and not of the vendor (called in the Act the feoffor), and should render to the chief or superior lord the same services which the vendor rendered before the sale.

(*e*) Stubbs, Const. Hist., i. 432, 433; ii. 276-280.

and of the general levy; but obviously there must always have been many feudal tenants unable to render personal service, and the calling out under the general levy of the whole population capable of bearing arms can but very rarely have been desirable (a). Service by deputy, or payment in lieu of personal service, and the calling out of a quota only, were accordingly allowed from very early times.

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deputy, and composition in lieu of personal service.

11. In the case of the feudal levy, we must first notice the clergy, who held their lands by the tenure known as *Frankalmoigne*, and who, as a rule, performed their military service by deputy or paid a composition (b), though cases of military prelates are well known in history. Women also, and infants, and other feudal tenants who were unable to render personal service, either found substitutes or paid a composition (c); and the payment of a composition in lieu of service was at an early date extended from those who were unable, to those who were unwilling, to serve in person.

In case of feudal levy.

12. Henry II appears to have been the first to require a number of knights, instead of serving in person for forty days, to equip and maintain a knight in service for a longer period: and the same king began (about 1156) to levy a money composition for personal service, under the name of Scutage or Escuage (d). This composition was probably levied at first only by agreement between the king and his subjects; but it subsequently became an abuse, and gave rise to remonstrances as a tax levied by royal authority only; and from 1207 until the end of the reign of Edward II (1327) it was levied only under assessment by Parliament (e). With the decay of the feudal system the tax fell into disuse (f); and it was ultimately, together with tenure by knight service, abolished during the Commonwealth, and finally extinguished on the Restoration in 1660 (g).

Scutage or Escuage.

13. Similarly, in the case of the general levy, the

In case of

(a) Stubbs, Const. Hist., ii. 283.

(b) Grose, Mil. Antiq., i. 5; Scott, i. 138, 248. See, however, writs requiring personal service in Rymer's *Fœdera*; one is printed by Grose, Mil. Antiq. i. 5.

(c) Grose, Mil. Antiq. i. 6, 7.

(d) Stubbs, Select Charters, 272, 338, 355; Const. Hist., i. 581, 589-90; ii. 279, 283; Grose, Mil. Antiq., i. 7, 8; Scott, Brit. Army, i. 119, 138, 245. Escuage is in Latin *Scutagium*, from *scutum*, a name given to a fief held on military service.

(e) The charter granted by Henry II in 1207, and the Great Charter granted by John in 1215 required this; the omission of the requirement from later charters did not at first alter the practice. Stubbs, Const. Hist., i. 579, 581; Grose Mil. Antiq., i. 7; Coke, Inst., i. 72 b, 74 b, note 37; Stubbs, Select Charters, 285, 338, 355.

(f) Coke, Inst. i. 74 b, note 37.

(g) By Act 12 Cha. II, c. 24, together with other feudal incidents. Excise duties on beer were granted to the Crown as an equivalent.

Ch. IX.

general
levy, quota
and contri-
butions to
expenses.

practice arose of calling on a certain quota only from each county to serve in person, and of requiring those not so called on to supply with arms and victuals, and to defray the expenses of those who served in person (*a*). This developed into a sort of tax on the county or township, not under the authority of Parliament, and continued until very recently, in the form of a liability on the part of the county to pay a part of the expenses of the militia (*b*).

Both the feudal and the general levy when summoned for war, were summoned by writ from the Crown.

Mode of
calling out
feudal levy.

14. In the case of the feudal levy a special summons was issued to each baron, bishop, and abbot, and served by the sheriff, while those of lower rank were summoned by a general proclamation of the sheriff made in obedience to the royal writ (*c*).

Commis-
sions of
array of
general
levy.

The writs directing the array of the general levy (which have been mentioned above), became known in the reign of Edward I as Commissions of Array (*d*), and did not always distinguish between those liable to serve under the feudal levy and those liable under the general levy, and those who served under the claim of purveyance. These commissions usually, in accordance with the above mentioned practice, called for a certain quota only both of the general and feudal levy to serve in person, requiring those who were not called to serve in person to pay a contribution to the expenses. They also directed the commissioners to "elect" a number of men, that is, virtually to press them to join the army for general service.

Questions as
to legality
of Com-
missions for
purpose of
foreign
service.

15. So far as these commissions were to raise a force for the defence of the realm against invasion, they were perfectly legal; but even if they were always legal in form, they were used, not merely for the legal purpose of raising troops to resist invasion, or to invade Scotland (which might be treated as resisting invasion), but also for the purpose of raising troops for foreign service. They threw on the counties the burden of finding soldiers for and paying the expenses of foreign wars, and thus indirectly taxed them without consent of Parliament, a practice which—after the rise of Parliament at any rate—was unconstitutional.

(*a*) Stubbs, *Const. Hist.*, ii. 283. Stubbs, *Select Charters*, 350.

(*b*) Part of this was "coat and conduct money," said to have begun in the reign of Queen Elizabeth, with a promise of repayment by the Crown, and formed a subject of dispute between Charles I and the Parliament; Scott, *Brit. Army*, i. 448; Clode, *Mil. Forces*, i. 21; Cobbett, *Parliamentary History*, ii. 549, 562, 642, 651, 655.

(*c*) Grose, *Mil. Antiq.*, i. 65; Stubbs, *Const. Hist.*, ii. 278.

(*d*) Stubbs, *Const. Hist.*, ii. 280-5. Hallam, *Const. Hist.*, ii. 133, states the earliest commission of array as of 1324 and the last of 1527. But see Stubbs, *Select Charters*, 350, and *Const. Hist.*, ii. 284, and the commissions of musters of Elizabeth's reign, Grose, *Mil. Antiq.*, i. 79.

16. This grievance was accordingly resisted by Parliament; and by a series of Acts beginning in 1327, it was provided that men should not be required to serve out of their counties except in the case of invasion; that men-at-arms, hoblers, and archers chosen to serve out of England should be paid by the Crown after leaving their counties; and that no man should be constrained to find men-at-arms, hoblers, or archers, unless bound by feudal service, or under the authority of Parliament (*a*).

Ch. IX.

Resistance of Parliament.

17. During the wars of the Roses and the reigns of the Tudors, troops were raised in the most irregular manner; constitutional rights were ignored and forgotten, and not only were commissions of array continued, but the practice of impressing soldiers under them became so common, that impressment was assumed to be the right of the Crown (*b*); while certain Acts in the time of Henry VIII and of Philip and Mary increased and enforced the liability to provide horses and arms in proportion to property (*c*), and to practice archery (*d*), and another Act of Philip and Mary imposed a penalty for not attending musters of commissioners authorised to muster men and levy the ablest for the wars (*e*); and we learn from the Acts in Elizabeth's reign (*f*) as well as from Shakspeare (*g*), that impress-

Impressment during wars of the Roses and in time of Tudors.

(*a*) Stubbs, *Select Charters*, 350; *Const. Hist.* ii. 285, 396, 539; iii. 279; Lingard, iv. ch. 2; *Acts 1 Edw. III.* st. 2, cc. 5, 7, 15; 18 *Edw. III.* st. 2, c. 7; 25 *Edw. III.* st. 5, c. 8; 4 *Hen. IV.* c. 13. The form of commissions of array was settled in Parliament in 5 *Hen. IV.* A.D. 1404. Stubbs, *Const. Hist.* iii. 262. "Hobler" was a light cavalry soldier; Grose, *Mil. Antiq.* i. 106; Scott, *Brit. Army*, ii. 22, 329. For cases of armies raised at the charge of counties, see Sir R. Cotton's paper, printed in Grose, *Mil. Antiq.*, i. 74, and the Ship Money Case in Howell's *State Trials*, iii. 825.

(*b*) Stubbs, *Const. Hist.* iii. 278; Rymer's *Fœdera*; Hallam, *Const. Hist.*, ii. 130. See 1 *Edw. III.* st. 2, c. 15.

(*c*) 33 *Hen. VIII.* cc. 5, 9; 4 & 5 *Phil. and Mar.* c. 2. The last Act repealed the old Act, except 33 *Hen. VII.* c. 9, as to providing arms. It also required cities and towns to provide arms at the common charge. Compare Stubbs, *Select Charters*, 147.

(*d*) 3 *Hen. VIII.* c. 3; 33 *Hen. VIII.* c. 9, containing an order to practise archery, with a prohibition of unlawful games, as bowles tennis, coitinge, &c.

(*e*) 4 & 5 *Phil. and Mar.*, c. 3. This assumed the right to muster and impress.

(*f*) 5 *Eliz.* c. 5, s. 24; 35 *Eliz.* c. 4; 43 *Eliz.* cc. 3, 9.

(*g*) Shakspeare, *Hen. IV.* Part I, Act 4, sc. 2, Falstaff says: "I have misused the king's press damnably; I have got in exchange of 150 soldiers 300 and odd pounds. I press me none but good householders, yeomen's sons; inquire me out contracted bachelors, such as had been asked twice on the banns; such a commodity of warm slaves as had as lief hear the devil as a drum; such as fear the report of a culverin worse than a struck deer, or a hurt wild fowl * * * and they have bought out their services; and now my whole charge consists of * * * such as indeed were never soldiers, but discarded unjust serving men, younger sons to younger brothers, revolted tapsters, and ostlers trade-fallen; the cankers of a calm world and long peace; ten times more dishonourably ragged than an old-faced ancient; and such have I to fill up the rooms of them that have bought out their services, that you would think I had 150 tattered prodigals lately come from swine-keeping * * * Nay, and the villains march wide betwixt the legs, as if they had gyves on; for indeed, I had the most of them out of prison."

Ch. IX. ment was then commonly considered to be one of the prerogatives of the Crown (*a*).

Repeal of
Armour
Acts in
reign of
Jas. I.

18. In 1604, the first Parliament of James I repealed the above-mentioned Acts of Henry VIII and of Philip and Mary (*b*) as regards the provision of armour and horses: and as that repeal was held to revive the older Acts respecting the provision of armour, those Acts were finally repealed in 1624, the last year of the reign of James I (*c*).

Commissions of
musters,
and trained
bands.

19. The liability to serve in the general levy, however, still continued, and was still enforced by means of commissions of array, which gradually developed into a rather different form under the title of Commissions of Musters (*d*). These commissions directed the commissioners to register and muster all persons liable to provide horses, arms, or soldiers, and to select a convenient number of such persons to serve in person at the charge of their counties for the service and defence of the Crown, who were to be sorted into bands, and trained and exercised at the charge of the different parishes in the county. These commissions and this description of training appeared to have assumed at the end of the sixteenth and the beginning of the seventeenth century a quasi-permanent form under Lieutenants of counties or other commissioners, and the bands trained under them became known as Trained or Train Bands, and were mustered annually. At the same time there existed, side by side with the trained bands, and in more or less connection with them, voluntary bodies, such as the Honourable Artillery Company in London, and similar bodies elsewhere, which doubtless owed their origin to the fact of its being fashionable to possess military acquirements (*e*).

Commissions of

20. During the reign of Charles I, the commissions of

(*a*) Hallam, *Const. Hist.*, ii. 130-131; Clode, *Mil. Forces*, i. 17; Grose, *Mil. Antiq.*, i. 97; Rushworth, *Historical Collections*, i. 152.

(*b*) 33 Hen. VIII, c. 3; 4 & 5 Phil. and Mar. c. 2, repealed by 1 James I, c. 25, s. 7. See Hallam, *Const. Hist.*, ii. 133.

(*c*) By 21 Jas. I, c. 28; See Scott, *Brit. Army*, i. 394.

(*d*) These musters are distinct from the musters of troops in pay.

(*e*) Grose, *Mil. Antiq.*, i. 79; ii. 324. Raikes, in his *Hist. of Hon. Artill. Compy.*, i. 28-143, mentions the organisation of the trained bands in 1605, and that they were used to suppress riots. Provisions were made for storing and repairing the arms; Rymer, A.D. 1612; Cobbett, *Parly. Hist.*, ii. 782, 783, 850, 934; Clode, *Mil. Forces*, i. 29. Camden speaks of the commission to the lieutenant as a permanent commission of array; the former seems practically to have superseded the other. See also the commissions given to lieutenants, Lodge's *Illustrations of Brit. Hist.* ii. 325. The commission there mentioned gives the lieutenant powers similar to those of the commission of musters, and also power to use martial law, and to make a provost-marshal. See also Scott, *Brit. Army*, i. 326-8, 379, 394, 402-407. An abstract of the commission issued before the Spanish Armada is printed in Scott, *Brit. Army*, i. 345. See also Commissions in Rymer. The modern commission to a lord lieutenant (Clode, *Mil. Forces*, i. 586), is expressed to be issued in pursuance of the Militia Acts.

musters were used for the purpose of exacting contributions in money and arms from the counties, and so taxing them without the consent of Parliament. These exactions were felt to be grievances, and complained of in Parliament, and, together with commissions for trying persons by martial law in time of peace and the practice of billeting, were, in 1627, declared to be illegal by the Petition of Right (*a*). The exactions nevertheless continued, and together with the impressment of soldiers and the powers of the lieutenants of counties, formed the subject of further complaints in the Parliament of 1640 (*b*).

Ch. I.
—
musters, a grievance under Charles I.

21. In the Long Parliament in the same year, Charles I, though at first claiming the power of impressment as the ancient and undoubted prerogative of the Crown, assented to an Act declaring impressment illegal (*c*). This Act, after reciting rebellions in Ireland, which would endanger not only that kingdom, but also the kingdom of England, unless "a course be taken for the preventing thereof, and for the raising and pressing of men for those services," and also reciting that by the laws of the realm none of His Majesty's subjects ought to be impressed or compelled to serve out of his country, except in case of necessity or invasion, or except they be otherwise bound by the tenure of their lands, gave statutory authority to impress soldiers for service in Ireland.

Impressment declared illegal by Long Parliament.

22. The Parliaments of Charles I, while protesting against the exactions enforced by the lieutenants of counties and the illegality of impressment, did not complain of the mustering of the trained bands; and the value of the trained bands, or militia as they now began to be called, and the necessity for exercising them, and providing them with arms and ammunition, were recognised on many occasions by the Long Parliament (*d*). Parliament, however, was extremely unwilling to leave the command of the militia under the control of the Crown exercised through the lieutenants of counties, and this question was one of the principal matters in dispute at the time of the rupture between Charles I and his Parliament (*e*).

Trained bands or militia under Charles I.

23. The mode in which troops were raised during the Civil War and the Commonwealth was necessarily irregular, and need not be noticed here.

Troops raised irregularly during Civil War.

(*a*) 3 Cha. I, c. 1. See extract from Petition of Right below, App. III.
(*b*) As to complaints in Parliament, in addition to the complaints as to ship money, Cobbett, Parly. Hist., ii. 233-5, 549, 561, 642, 652-5.

(*c*) 16 Cha. I, c. 28. As to previous proceedings in Parliament, see Cobbett, Parly. Hist., ii. 968, 977-981, 1087.

(*d*) Cobbett, Parly. Hist., ii. 655. See also 782-783, 849, 934.

(*e*) Cobbett, Parly. Hist., ii. 1069, 1243. Hallam, Const. Hist., ii. 133-6.

Ch. IX.

Other
classes of
soldiers.

Crown
grantees.

Criminals
and debtors

Mer-
cenaries.

24. Before passing to the second period after the Restoration in 1660, a short mention must be made of three other classes of soldiers raised in the earlier period, and of the mode of enforcing the service of soldiers :—

(i.) Holders of offices, pensions, lordships, or lands from the Crown were, at the end of the fifteenth century, made liable to serve at home or abroad, on pain of forfeiture (*a*).

(ii.) Sometimes also criminals were pardoned, or debtors released, on condition of serving as soldiers (*b*).

(iii.) The third and most important class was that of men who received pay for their services, who were termed “mercenaries,” or “stipendiaries,” terms which, though originally like the term “soldiers” (*c*), meaning those who were paid for their services, came at an early period to mean those who adopted arms as a profession, and served solely for pay. The convenience of employing mercenaries is obvious, having regard to the limitations on the service of the general levy and of the feudal levy mentioned above ; and from the date of the Conquest in 1066 mercenaries formed part of the forces of the Crown. The distinction, however, between these troops and those raised under the feudal or general levy was not always a wide one, as men raised under those levies were often induced by liberal payment to serve beyond the seas, or for more than 40 days, and doubtless often fell into the class of mercenaries.

Raising of
mercen-
aries, by
indentures
or con-
tracts.

25. Mercenaries were usually raised by an indenture or contract between the king and some person of high position, who was able by his influence or wealth to obtain soldiers. The men so raised were at first chiefly foreigners ; and as their employment in England was not only strongly objected to, but was rendered less necessary by the liability of the inhabitants of the realm to service at home, they were almost entirely employed on foreign service. After the raising of men compulsorily under commissions of array was, as before mentioned, restrained by Parliament in the reign of Edward III, the practice of raising troops by indentures became more common ; in

(*a*) By 11 Hen. VII, c. 18 ; 19 Hen. VII, c. 1 ; Clode, *Mil. Forces*, i. 337, 350.

(*b*) Grose, *Mil. Antiq.*, i. 73 ; Scott, *Brit. Army*, i. 282.

(*c*) Soldier being derived from “solidus” “solde” or pay ; “soldato” in Italian meaning a hired man. For *conductiti*, or hired men, mentioned also in Ducange (the *condottieri* of Italy), there seems to be no English equivalent.

fact, after the beginning of the reign of Henry V, the larger part of the forces of the Crown were so raised (*a*).

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26. At first the soldiers so raised were enlisted to serve the officer who raised them, but after 1491 (7 Henry VII), if not before, they were enlisted to serve the king (*b*), and as early as the time of Charles I, enlistment was carried on under beating orders issued by the Crown (*c*). The mode of raising troops by contract with an individual, sometimes for a sum of money, sometimes on condition of the contractor having the appointment of the officers of the force raised, continued (*d*), notwithstanding the change of enlistment from a contract to serve the officer to a contract to serve the Crown, and notwithstanding that the establishment of a standing army altered the practice of enlisting for a particular war to that of enlisting for continuous service. Enlistment, however, was strictly regimental, that is, for service in the particular regiment with which the recruiting officer was connected.

Enlistment to serve the Crown.

27. The obligation to serve (except in the case of a breach of that obligation by desertion in the field) was not enforced in military courts, but by civil penalties; in the case of the general levy by fine, seizure of property, and imprisonment, and in the case of the feudal levy by fine and forfeiture of the fief held on condition of rendering military service (*e*). Indeed, the Crown derived an income from distraining owners of fiefs to assume knighthood (*f*). Moreover, the high-handed proceedings of fine and imprisonment which we find, even after the reign of Queen Elizabeth, exercised in other cases, were doubtless exercised for the purpose of compelling persons to serve.

Enforcement of obligation to serve.

28. In the case of mercenaries, these powers were insufficient, and therefore a soldier deserting from the captain with whom he contracted to serve, and who was under an indenture with the Crown to provide a certain

In case of mercenaries.

(*a*) Grose, *Mil. Antiq.*, i. 57-77. Hallam, *Const. Hist.*, ii. 130; Stubbs, *Const. Hist.*, i. 433, 434, 450, 587, 589; ii. 277; *Magna Charta of King John*, Art. 41; Stubbs, *Select Charters*, 286. In Rymer's *Fœdera*, there are contracts between Hen. I and Earl of Flanders, for supplying troops. See also Rymer, A.D. 1284, 1295; Grose, *Mil. Antiq.*, i. 188; Scott, *Brit. Army*, i. 264, 279.

(*b*) See preamble to 18 Hen. VI, cc. 18, 19; 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5, and remarks on these Acts in "*The Case of Soldiers*," Coke's Reports, Part VI, 27a.

(*c*) So called from the expression at the beginning of the order, "to raise troops by beat of drum," which was derived from the actual use of the drum. See Clode, *Mil. Forces*, ii. 580-584.

(*d*) Clode, *Mil. Forces*, ii. 6, 581.

(*e*) See Acts quoted above in note (*a*), p. 220; and writ to arrayers of 17th June, 1327, in Rymer's *Fœdera*, directing the arrayers to punish the disobedient by arrest and seizure into the King's hands of their lands, tenements, goods, and chattels; Lingard, iv. ch. ii.

(*f*) Grose, *Mil. Antiq.*, i. 3, 8; Stubbs, *Const. Hist.*, ii. 278, 282; Hallam, *Middle Ages*, i. 170; Scott, *Brit. Army*, i. 119, 122, 243; Cobbett, *Parl. Hist.*, ii. 549, 612.

Ch. IX. number of soldiers, was in 1439 declared by Parliament to be punishable as a felon, that is, in a civil court (*a*), and at a later date this enactment was extended to soldiers who had contracted to serve the Crown (*b*).

Punishment of desertion after Revolution.

29. The punishment of desertion in a civil court became practically unnecessary after the Revolution, when the Mutiny Acts passed annually by Parliament, provided a more speedy punishment by means of a military court (*c*).

Second Period—Standing Army.

Changes in military system on the Restoration in 1660.

30. At the Restoration in 1660, considerable changes took place in the military system of the country. Knight service, with the feudal levy and its incidents, including escuage, was finally abolished (*d*); the organisation of the general levy, of which the trained bands formed part, into the militia was completed under the authority of Parliament, and at the same time the king laid the foundation of the present standing army.

No standing army before Restoration.

31. Before the Restoration there had been no standing army. Armies for particular wars had indeed been raised and paid for by Parliament, but were not kept on foot as standing armies after the conclusion of the wars for which they were raised, mainly, perhaps, on account of the cost (*e*). A few troops were also maintained in certain garrisons, and small corps of serjeants-at-arms (*f*), yeomen of the guard (*g*), and gentlemen pensioners (*h*), existed; but these corps were kept up rather as personal attendants on the

(*a*) 18 Hen. VI, c. 19. Every felony at that time involved capital punishment and forfeiture of personal property.

(*b*) 7 Hen. VII, c. 1; 3 Hen. VIII, c. 5; see also 2 & 3 Edw. VI, c. 2, revived by 4 & 5 Phil. and Mar., c. 3, s. 8. The Acts also provided for the punishment of certain frauds, as regards pay, &c.

(*c*) The above mentioned Acts, 7 Hen. VII, c. 1; and 3 Hen. VIII, c. 5, were determined to be in force by the *Case of Soldiers*, Coke's Rep., Part vi, 27*a*, and were put in execution by James II, *Rex v. Dale*, 2 Shower's Rep. 511; Howell's State Trials, xii. 262, note 7, but being in practice rendered useless by the Annual Mutiny Acts, were repealed as obsolete by the Statute Law Revision Act, 1863. Grose, Mil. Antiq., i. 65, writing before such repeal, observes that if the Mutiny Act were at any time to expire, the soldier would be punishable for desertion in a civil court under the above-mentioned Acts. See also Hale, Pleas of the Crown, i. 670-80; Blackstone's Commentaries, 21st edn., iv, 102; Clode, Mil. Forces, i. 350. Macaulay, in his History (iii. 43), says that the Acts put in force by James II were obsolete, and that the construction put upon them by the judges was considered by respectable jurists as unsound. It appears, however, from the report of the case that the illegality, if any, was in regard to the place of execution of the soldier convicted, and not in the fact of his prosecution.

(*d*) By 12 Cha. II, c. 24.

(*e*) Grose, Mil. Antiq., i. 61; Scott, Brit. Army, i. 328.

(*f*) Now a purely civil body; Grose, Mil. Antiq., i. 61, 173-175.

(*g*) Established by Hen. VII; in 1485; Hallam, Const. Hist., ii. 131; Grose, Mil. Antiq., i. 61, 175-7.

(*h*) Established in 1509 by Hen. VIII; Grose, Mil. Antiq. i. 61, 113-20.

King than for operations in the field (a). The only other corps of a permanent character were the trained bands, and the Honourable Artillery Company of London, and similar associations, which were in effect either part of the general levy, or voluntary associations, and not in the nature of a standing army (b).

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32. The army raised by the Parliament during the Civil War was disbanded under Acts of Parliament (c) passed on the Restoration in 1660, but under a section in those Acts Charles II was enabled to keep up not only the garrisons in certain fortified places, but also one or two of the regiments which had aided in his restoration (d). Moreover, he subsequently raised several other regiments by voluntary enlistment, and paid them out of the liberal grants made to him for life by Parliament. These regiments were maintained during his reign and that of his successor, James II, and their numbers were gradually increased, not merely on the occurrence or in anticipation of foreign war, but on other occasions (e).

Maintenance of standing army after Restoration.

33. The maintenance of these troops, however, formed the subject of frequent remonstrances in Parliament (f), and the increase of their numbers by James II was one of the causes which led to the Revolution of 1688. At that time, while the opponents of the Court party during the previous reigns had just escaped from the evils and the dangers of a standing army, the Court party had not forgotten how keenly they had felt them during the Commonwealth. Both parties therefore joined in procuring the declaration in the Bill of Rights (g), "that the raising or "keeping a standing army within the Kingdom in time "of peace unless it be with the consent of Parliament is "against law;" a declaration annually repeated, up to 1878 in the preamble to the Mutiny Act, and since then in the preamble to the Annual Act bringing the Army Act into force.

Maintenance of standing army in time of peace, without consent of Parliament, declared illegal by Bill of Rights.

34. Notwithstanding the insular position of England,

Control of Parliament,

(a) Grose, *Mil. Antiq.*, i. 61.

(b) Hallam, *Const. Hist.*, ii. 131-3; Stubbs, *Const. Hist.*, i. 433, 591-2; *M.* 277, 282-3, 286.

(c) 12 Cha. II, cc. 9, 10, 15, 20, 27, 28.

(d) For instance, General Monk's regiment raised at Coldstream, afterwards the Coldstream Guards, which, together with other regiments, was disbanded and re-formed on the same day. Grose, *Mil. Antiq.*, i. 61, 98; Mackinnon's *Hist. of Coldstream Guards*. The territorial titles of other regiments, as 10th North Lincoln, 15th York, East Riding, arose similarly, no doubt, from the districts in which they were first raised.

(e) As, for instance, when the garrison of Tangier was brought to England on the abandonment of that settlement. Grose, *Mil. Antiq.*, i. 61, 98; Macaulay, *Hist. of England*, i. 293, 294. See also Clode, *Mil. Forces*, i. ch. iv.

(f) Taswell Langmead, *Constit. Hist.*, 497, 609; Clode, *Mil. Forces*, i. ch. iv.; 31 Cha. II, c. 1.

(g) 2 Will. & Mar., sess. 2, c. 2 (1689). It will be observed that this Act is a declaration of old law, not an enactment of new.

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—
since the
Bill of
Rights.

the course of events since 1689 (*a*) has at times been such as to make the nation acquiesce in the necessity for keeping up a standing army, and such a force has accordingly been maintained without intermission since the passing of the Bill of Rights. But the raising, government, and payment of the army have always been expressly sanctioned by Parliament, and only for a period of twelve months at a time, so that it is a statutory, and not a prerogative force, and the Crown is under the necessity of annually asking for the consent of Parliament to its maintenance.

As respects
number of
troops.

· **35.** The number of troops to be maintained is and has since 1712 been mentioned in the preamble to the annual Act which sanctions the army (*b*), and any unauthorised augmentation of such number has been always resisted by Parliament (*c*); indeed Parliamentary authority has been invoked to enable the Crown to accept the services of Volunteers (*d*). Any excess of forces above the number named in the preamble to the annual Act did not, however, and will not affect the application to those forces of the Act enacting military law (*e*), though it would form a ground for censure or impeachment of the Minister who authorised the excess. The provision of the Bill of Rights prevents the introduction of foreign troops into the kingdom without the consent of Parliament (*f*).

*Raising, Government, and Payment of Army since
1660.*

Raising
government
and pay-
ment of
army since
1660.

36. A short statement will now be given of the manner in which the army has been raised, governed, and paid from the time of the Restoration until the present day.

Compulsory
service
replaced by
system of
bounties.

37. The final abolition of impressment in 1640 has been already mentioned, and since the Restoration in 1660

(*a*) First, the engagement of England in the continental league against Louis XIV, accompanied by the victories of Marlborough; then the dangers from the Scotch and other Jacobites; then the Seven Years' War; the American War; the French Revolution; and the Peninsular War. Until the latter, the numbers were very small, see table, Clode, *Mil. Forces*, i. 398; Hallam, *Const. Hist.*, iii. 256-258; Taswell Langmead, *Const. Hist.*, 608.

(*b*) Formerly the Annual Mutiny Act, and now the Army (Annual) Act. The first Act in which the numbers were mentioned was 12 Ann, c. 13, which regulated the number and discipline of the forces continued on foot after the conclusion of the peace of Utrecht.

(*c*) Clode, *Mil. Forces*, i. 85-89.

(*d*) See below, para. 110, *et seq.*

(*e*) This has recently been provided for by express enactment. See Mutiny Act, 1869, s. 59, and Army (Annual) Act. The number of the Marines was not mentioned in the preamble to the Marine Mutiny Act, and is not mentioned in the Army (Annual) Act, possibly because they partly belong to the navy, whose numbers are not limited.

(*f*) Clode, *Mil. Forces*, i. 89.

compulsory service in the army in the usual sense of the term has been unknown in this country; but at different times Acts have been passed authorising the impressment of certain persons of blemished character, or unsettled mode of life (*a*). Still for the greater part of the period enlistment has been entirely voluntary, recruits having been induced to enlist by means of sums called bounties, paid to them on their enlistment, which in time of war rose to a considerable amount (*b*).

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38. During the wars of the greater part of the eighteenth century recruits were wanted for the militia as well as for the army, so that difficulties constantly arose in consequence of competition between the officers recruiting for the two forces. These difficulties were intensified by the use of the ballot for the purpose of raising the militia, inasmuch as parishes, in order to avoid the ballot by obtaining volunteers, and persons drawn in the ballot for service, in order to obtain substitutes, paid high prices to the very men who would otherwise have enlisted in the army. Since 1802, the policy has been to encourage enlistment from the militia into the army in time of war (*c*).

Competition for recruits between army and militia in 18th century.

39. In time of war, since the Revolution in 1688, the old system of contract has to some extent been reverted to, and troops have been raised by an agreement between the Crown and some nobleman or gentleman, who has undertaken to raise a corps on condition of receiving the nomination of all or some of the officers (*d*).

Contracts to raise troops subsequently to the Revolution in 1688.

40. Even in time of peace, the mode of raising troops down to 1783 was by a species of contract between the

System of recruiting by beating orders.

(*a*) Provisions for the release from custody of criminals pardoned on condition of enlisting were contained in the Mutiny Act of 1702 (1 Ann. stat. 2, c. 20, s. 50), and repeated in subsequent Acts to 1711. The impressment of persons having no settled mode of living was allowed by Acts passed between 1703 and 1711 (2 & 3 Ann. c. 13, 3 & 4 Ann. c. 10, 4 & 5 Ann. c. 21, 6 Ann. cc. 17, 48, 7 Ann. c. 2, 10 Ann. c. 12 in the Record Edition of the Statutes), and again by Acts of 1744 (17 Geo. II, cc. 15, 26), 1745 (18 Geo. II, c. 10), 1756 (29 Geo. II, c. 4), 1757 (30 Geo. III, c. 8), 1778 (18 Geo. III, c. 53), and 1779 (19 Geo. III, c. 10). In 1758, the Court of Queen's Bench discharged a man improperly pressed under the Act of 1757, *Rez v. Kessel*, Burrow's Rep. 1. 637; and Grose, Mil. Antiq., i. 98, note (*b*) records the bad results of the Act of 1779. Provisions were made for the release of insolvent debtors from custody on condition of enlisting or finding persons to serve in their places in 1696 (7 & 8 Will. III, c. 12, s. 14), 1702 (1 Ann. c. 19), and 1703 (2 & 3 Ann. c. 10). See also 1 Geo. III, c. 17, s. 57. See Clode, Mil. Forces, ii. 8-19, 48-55, 587; Reports on Recruiting, Parliamentary Papers, 1861, Vol. xv.; and 1867, Vol. xv.; Appendix by Mr. Clode.

(*b*) For the history of enlistment since 1660, see Clode, Mil. Forces, ii. ch. xv. and the Parliamentary Papers mentioned in note (*a*) *supra*.

(*c*) The various difficulties which arose, and the expedients resorted to to remove them, are detailed in Clode, Mil. Forces, i. ch. xiv. See the Parliamentary Papers mentioned in note (*a*) *supra*.

(*d*) This system was known as that of "raising men for rank," see Clode, Mil. Forces, ii. 5. This system was resorted to as late as 1854, in the Crimean war.

(M. L.)

Ch. IX. Crown and the colonel, who received from the Crown a beating order, enabling him to raise recruits, and was held responsible for enlisting sufficient recruits to raise and keep up the regiment to its proper numbers. The sums for recruiting expenses and for pay and clothing were issued to him in gross; and subject to certain limitations as to the amount of bounties, he and his officers made their own bargains with the recruits (*a*).

Mode of
defraying
expenses of
recruiting.

41. The sums for recruiting expenses in each regiment were carried to a fund called the stock purse, the accounts of which were made up annually, and the surplus (if any) was handed to the captains of the companies. The commission to a major or colonel appointed him also to be a captain of the regiment, so that he had a company of which he shared the profits, while it was commanded by a captain lieutenant. The balances, however, were seldom large; and when vacancies became numerous from losses on service or other causes, the cost of recruiting exceeded the allowance, and the officers were liable to heavy expenses, from which they were not unfrequently relieved by extra allowances. One survival of this system was the extra allowance made to the senior colonel and senior major (*b*).

Pecuniary
interest of
officers in
system.

42. Under the above system the officers had a pecuniary interest in keeping down the expense of recruiting, both by obtaining men cheaply, and by prolonging the service of men enlisted, and so avoiding the necessity of obtaining recruits in their places. Fraudulent re-enlistment defrauded the captain, and as early as 1689 this offence was by the Mutiny Act made punishable with death (*c*). At the same time the system held out great temptations to frauds in mustering and drawing pay for non-effective men as effective, which, though restrained by provisions in the Mutiny Act, continued to prevail until the pecuniary interest of officers in the pay of the men ceased (*d*).

Abolition of
system,
1783.

43. The above system was abolished in 1783 (*e*), and recruiting has ceased to be a matter of pecuniary interest to the officer, and is carried on by recruiting officers acting under the Inspector-General of Recruiting in accordance with orders of the Secretary of State (*f*), and the expenses are paid directly by the Crown. Of late years the pay-

(*a*) Clode, Mil. Forces, i, 74, 105, ii, 2-6.

(*b*) Clode, Mil. Forces, ii, chap xv., and Appendix, note (WW), p. 568.

(*c*) 1 Will. & Mar., sess. 2, c. 4, s. 1; Clode, Mil. Forces, ii, 3.

(*d*) Clode, Mil. Forces, ii, 8-10.

(*e*) By 23 Geo. III, c. 50, known as "Burke's Act."

(*f*) Clode, Mil. Forces, ii, 10, 20, 55. The Enlistment Act, 1870, conferred, as does the Army Act, statutory power on the Secretary of State to issue orders.

ment of bounties has been discontinued, but the power to issue them in times of emergency is retained. Ordinarily, a small pecuniary reward is given to recruiters and recruiting agents for each recruit raised and approved. Ch. IX.

44. The term of service, after it ceased on the introduction of the standing army to be for a particular war only, has varied continually. As a general rule, until the year 1847, the term of service of men enlisted in time of peace, was for life, though an engagement to serve for life in any civil capacity is void, as contrary to public policy ; but whenever the exigencies of war required additional troops, recourse was had to enlistment for a limited term of years (*a*). Term of service.

45. In 1847, the Army Service Act was passed, which, as amended in 1849, limited first engagements to ten years for the infantry, and twelve for the cavalry or artillery, but allowed re-engagements for such further periods as would make up a total service of 21 or 24 years, as the case might be ; and a soldier with the approval of the military authorities might continue his service after the 21 or 24 years, until he gave three months' notice of his wish to be discharged (*b*). During the Crimean War (1855) and Indian Mutiny (1858) power was given temporarily to the Crown to enlist and re-engage for shorter periods, and also to re-engage men in the cavalry and artillery for a period making up 24 years' service (*c*). Army Service Act, 1847.

46. By the Army Enlistment Act, 1867 (*d*), first engagements were to be for 12 years in the infantry as well as in the cavalry and artillery, with power to re-engage for such a period as would make up 21 years' service, whether in the infantry, the cavalry, or the artillery, and the provision as to a soldier continuing in service after 21 years, until he gave three months' notice of his wish to be discharged, was re-enacted. Army Enlistment Act, 1867.

47. These provisions continued until the Army Enlistment Act, 1870 (*e*), when the system known as the short service system was introduced for the purpose of securing a body of reserves. Army Enlistment Act, 1870, and Reserves.

(*a*) Under several Acts in the time of Anne and Geo. II, and also under the Acts for impressment before referred to, the term of service was for a limited term of years. After 1829 men were enlisted for life only, and this continued until 1847.

(*b*) 10 & 11 Vict. c. 37 ; 12 & 13 Vict. c. 73. The power of cavalry and artillery to re-engage for 12 years, making a total of 24, was repealed by the Act of 1849. Section 1 of the first Act limited the first engagement to a maximum of 10 and 12 years respectively, but the words in the schedule as to the mode of filling up the attestation paper were construed to prevent an enlistment for any shorter period than the above terms. See the preamble to 18 & 19 Vict. c. 4.

(*c*) 18 & 19 Vict. c. 4 ; continued by 21 & 22 Vict. c. 55.

(*d*) 30 and 31 Vict. c. 34.

(*e*) 33 & 34 Vict. c. 67 ; the provisions re-enacted in Army Act are stated in ch. x.

(M.L.)

Ch. IX. The Army Reserve had been established in 1867 to consist of men enlisted from soldiers serving, or having served in the army, and to be a separate body with their own officers. The Act of 1870 practically altered its character, and the Reserve Forces Act 1882 has made corresponding alterations in the law.

The Militia Reserve was also established in 1867, and was, with minor changes, the same as under the present Act (a).

Government of
Army since
1660.

48. The government of the Army since 1660 is dealt with in Chapter II; it may, however, be observed here, that when the army became a constitutional army, that is, dependent on the consent of Parliament for its maintenance, the obligation to serve was allowed to be enforced by courts-martial with military procedure, and not merely as before, by the civil courts. The power to govern the army, as mentioned above, is annually given by Parliament; but when given is exercised, as in the navy and civil service, by the Crown alone. The manner in which that power is exercised is constitutionally subject, like the exercise of other prerogatives, to the advice of the ministers of the Crown, of whom the one particularly responsible for the army is one of the principal Secretaries of State.

Finance of
the army.

49. With respect to the payment of the army, the annual sanction of the army by Parliament removes the old difficulties, as Parliament grants the money for its maintenance. But the existence of a standing army rendered necessary a permanent machinery for administering that money. The history and nature of that machinery is hardly within the scope of the present work, and therefore a brief statement only can be made (b).

Grant of
money by
Parliament.

50. In the case of the army, as in that of the civil departments of Government, Parliament grants the necessary money on estimates submitted by the Crown, and the money granted is expended by the Crown, subject to control and audit on the part of Parliament (c).

Issue of pay.

51. The pay of the soldiers of each regiment was formerly issued to the colonel by the Paymaster-General (a civil officer, and often a member of Parliament), and his subordinates, who were civilians. It is now practically issued by the Paymaster-General to the station paymaster, and disbursed through the captains of companies, each of whom keeps an account with the men of his company.

(a) Reserve Force Act, 1867, 30 & 31 Vict. c. 110; Militia Reserve Act, 1867, 30 & 31 Vict. c. 111, amended by 33 & 34 Vict. c. 67; 34 & 35 Vict. c. 86; Mutiny Act, 1878, s. 107; 42 & 43 Vict. c. 32, s. 5.

(b) For a fuller account see Clode, Mil. Forces, ch. vi, vii, xxi, xxiii, on which the following summary is founded.

(c) For early instances of this control, see Forster's Life of Sir J. Eliot, i, 158.

52. The clothing of each regiment used to be supplied by the colonel, according to a pattern selected by a clothing board, and was paid for by him out of his allowance for "off-reckonings"; but since 1854 the clothing has been supplied direct by the clothing department. Ch. IX.
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Clothing.

53. The money granted for military stores was formerly expended by the civil part of the Board of Ordnance, a department which dates back before the Restoration, and of which the chief was the Master-General of the Ordnance, often a Cabinet Minister. Military stores.

54. The money granted for barracks, after being for a time expended under a special barrack department, which was at first of a purely military character, and afterwards partly civil, was eventually transferred to the Board of Ordnance. Barracks.

55. The money granted for provisions and transport was expended through the Commissariat, who were civilians and officials of the Commissioners of the Treasury. From 1704 to 1836 there were other civil officers, called Controllers of Army Accounts, whose duty it was to examine and check army accounts and contracts, and to report to the Treasury on frauds and abuses. One of them was sometimes present with the army. Their office was in 1836 merged in the Board of Audit. Provisions and transport.

56. For many years, besides the expenditure of the sums which were voted by Parliament upon estimates, there were expended large sums known as "army extraordinaries," which began with extraordinary expenses which could not be foreseen when the estimates were submitted to Parliament; but the system became an abuse, and was ultimately abolished in 1836. While it existed, the money was expended at first entirely by military officers, but during the present century partly by military officers and partly through the Commissariat or other civil officers. Army extra-ordinaries.

57. The office of Secretary at War, who afterwards usually held a seat in Parliament as one of the Ministry, began as that of a private secretary to the Sovereign in military matters. His position and duties were vague, but he undoubtedly was a civil officer, and had, especially after 1783 (Burke's Act), great control over the financial and other civil administration of the army, and was responsible for the estimates of military expenditure submitted to Parliament. He was, however, subordinate to the Ministers, and especially to the Secretary of State for the Colonies and War, when created (a). Secretary at War.

58. By the side of the civilian officers above-mentioned Com-mander-in-Chief.

(a) See Clode, *Mil. Forces*, chaps. iv. xxi.

Ch. IX. — there was the purely military administration, which remained under the direction of the Sovereign as Commander-in-Chief, assisted by a board of General officers, till the establishment of the office of the General Commanding-in-Chief in 1793 (*a*). The administration of military law was, however, checked by the Judge Advocate-General, a Privy Councillor, and usually a member of Parliament and one of the ministers of the day, who advised the Sovereign on the legality of the proceedings of courts-martial (*b*).

Secretary of
State for
War.

59. At the end of the eighteenth century, a third Secretaryship of State (*c*) was created, the holder of which was to have a general superintendence of the army and the colonies. During the peace after 1815, when the army was less important, and the colonies grew more important, the colonial part of the work absorbed most of the Secretary of State's attention. The outbreak of the Crimean War again called greater attention to the army, and in 1855 a new Secretary of State was created, and charged with the whole administration of the army, both civil and military. The powers and duties of the Board of Ordnance and of the Secretary at War were transferred to him, and the commissariat officials, and also the Paymaster-General, so far as concerned the army, were also placed under his orders (*d*). In 1858 the commissariat officials were made military officers, subject to the direction of the General commanding the force to which they were attached. But whether the officials engaged in the administration and discipline of the army are civil or military, the Secretary of State for War, a member of one of the Houses of Parliament and a Cabinet Minister, is responsible for the acts of all of them, and is the constitutional and responsible adviser of the Crown in all questions connected with the army.

Audit of
military
accounts.

60. The audit of military accounts has remained independent of the Secretary of State, and is now conducted

(*a*) See Clode, *Mil. Forces*, chap. xxvi. The Sovereign is Commander-in-chief, unless the office is granted away. The Duke of Marlborough, in Queen Anne's reign, was appointed Commander-in-chief, and commissioned officers by his own authority. The Duke of Cambridge was appointed Commander-in-chief in 1887, but has no power under the Patent to issue commissions. In India there is a Commander-in-chief, but without power to commission officers, except temporarily, until the Queen's pleasure is taken. Ordinarily, the officer commanding-in-chief holds a letter of service. His powers and duties (which are those of the present Commander-in-chief) were defined by an Order in Council dated 29 December, 1887.

(*b*) Clode, *Mil. Forces*, chap. xxvii.

(*c*) All the Secretaries of State have equal powers, so that, though in practice different Secretaries of State administer different departments, technically there is no distinction between them. A third Secretary of State had been created in 1768, but the office was abolished in 1782 by 22 Geo. III, c. 12. It was, however, revived in 1794; Sir Erskine May, *Const. Hist.*, iii. 360; Clode, *Mil. Forces*, ii. 320.

(*d*) See 18 & 19 Vict. cc. 10, 117; 26 & 27 Vict. c. 12.

on behalf of the House of Commons by the Audit Department under the Controller-General of the Receipt and Issue of Her Majesty's Exchequer and the Auditor-General of the Public Accounts, commonly called the Controller and Auditor-General. Ch. IX.

Militia.

61. The history of the militia, since the Restoration in 1660, divides itself into four periods; (1) from 1660 to 1757, (2) from 1757 to 1815, (3) from 1815 to 1852, during which the militia was practically in abeyance, and (4) from 1852 to the present time, during which the volunteer militia has existed. The militia, after a general sketch of its history during these periods, will be treated under the same three heads as the army, namely:—Raising, Government, and Payment. Periods of history of militia.

62. The militia, commonly so called, is the general or regular militia, as distinguished from the local militia which was established at the beginning of the present century, and which though in abeyance, might still legally be raised. At the beginning of this century also several Acts were passed relating to forces other than the regulars and militia, which will require notice (a). General and local militia.

Although the feudal levy was abolished in 1660, the liability to serve in the general levy has never been extinguished (b), and remains not only in constitutional theory, but also in the statutory and practical form of liability to serve both in the general and the local militia. First period Organisation of militia on Restoration in 1660.

63. The command of the trained bands, or militia, and the disposal of their arms, and the appointment and removal of the lieutenants of counties had, as before mentioned, formed one of the principal subjects of dispute between Charles I and the Long Parliament, in the course of which the name "militia" came into general use (c). On the Restoration, therefore, it was necessary that these questions should be dealt with; and a Bill for settling the militia was introduced into the Commons in the Parliament by which Charles II was recalled; but met with great opposition, "because there was martial law provided in it" (d). Consequently, though the feudal levy was

(a) As to these Acts and the local militia, see para. 101, *et seq.*

(b) The Act 4 & 5 Phil. & Mar. c. 3 (for musters) was not repealed until 1863, when it was repealed as obsolete by the Statute Law Revision Act (26 & 27 Vict. c. 125), with wide savings as to its effect.

(c) See above, para. 22. "Militia" seems to have been used as early as 1590; see Scott, *Brit. Army*, i. 418 (note), Bacon's *Essays*, and Raikes' *Hist. of the Hon. Artill. Compy.*, i. 106, 110, and it is constantly used in the reports of the proceedings in Parliament in 1640 and 1641; Cobbett, *Parly. Hist.*, ii.; though Whitlocke, in 1641, speaks of it as "this new word, this hard word"; *ibid.*, ii. 1078; Rushworth, *Historical Collections*, iii. pt. i. 525; Clode, *Mil. Forces*, i. 31 (note).

(d) *Commons Journals*; Cobbett, *Parly. Hist.*, iv. 145.

Ch. IX. abolished, Parliament was dissolved before any militia Bill could be passed. In the next Parliament the question was at once taken into consideration, and an Act was passed (*a*) to legalise for a year the training of "the militia and land forces" under the lieutenants of counties, to whom Charles II had in the meanwhile issued commissions.

Acts passed
1662-1745.

64. In the following year (1662) an Act was passed "for ordering the forces in the several counties in the kingdom"; and by this Act, as amended by an Act passed in 1663, the militia was at length organised, and the trained bands, except in the City of London, were ordered to be discontinued (*b*). Further provision was made for the new force by Acts of the subsequent reigns (*c*), and it was called out in 1690 on the occasion of the French invasion, and again during the rebellions of 1715 and 1745 (*d*).

Second
period. Re-
organisa-
tion of
militia after
rebellion of
1745.

65. The rebellion of 1745 brought into notice the general inefficiency of the force; and in 1756 attention was called by a panic as to a French invasion, and by the introduction of Hanoverian troops, for which the apprehended invasion had been made an excuse, to the necessity of strengthening the national defensive forces.

Act of 1757.

Accordingly in 1757 (rather against the will of the Ministers, and only for a period of five years) an Act was passed by which the force was re-organised on nearly the same basis as that on which the balloted militia now rests (*e*). Opposition arose in several counties to the execution of this Act, and difficulty was experienced in obtaining officers (*f*); and several Acts were subsequently passed for the purpose of enforcing the execution of the

(*a*) 13 Cha. II, stat. 1, c. 6. The preamble refers to the pending Bill for the militia.

(*b*) 14 Cha. II, c. 3; 15 Cha. II, c. 4. As to the discontinuance of the trained bands in fact, see Clode, *Mil. Forces*, i. 86. The old power to enlist and levy the trained bands in the City of London continued unaltered (being saved by the various Militia Acts) until 1794, when an Act was passed (34 Geo. III, c. 81), for the organisation of a militia force in the City. This Act (as amended by 35 Geo. III, c. 27), was subsequently repealed by 36 Geo. III, c. 92; and that Act, as amended by 39 Geo. III, c. 82 (see also 42 Geo. III, c. 90, s. 153) was in its turn repealed by 1 Geo. IV, c. 100, which still remains in force. As to the use of the term "trained bands" in the above Acts, see Raikes' *Hist. of the Hon. Artillery Company*, ii. 146.

(*c*) 7 & 8 Will. III, c. 16, which, after being re-enacted by 9 Will. III, c. 31, 11 Will. III, c. 14, 12 Will. III, c. 18, was made perpetual; 1 Ann. stat. 2, c. 15, 4 & 5 Ann. c. 10, 6 Ann. c. 28, 10 Ann. c. 33, 1 Geo. I, stat. 2, c. 14, 9 Geo. I, c. 8, 19 Geo. II, c. 2.

(*d*) See preamble to 2 Will. & Mar. sess. 2, c. 12, and 7 Geo. II, c. 23. Lord Mahon, *Hist. of England*, iii. 398-422.

(*e*) 30 Geo. II, c. 25, amended by 31 Geo. II, c. 26, 32 Geo. II, c. 20, 33 Geo. II, cc. 22, 24. See Clode, *Mil. Forces*, i. 39-42; Cobbett, *Parly. Hist.*, xv. 782; Lord Mahon, *Hist. of England*, iv. 133.

(*f*) Clode, *Mil. Forces*, i. 39; Lord Mahon, *Hist. of England*, iv. 134.

law. Progress was, however, made, and the force was embodied in the year 1759 (*a*). Ch. IX.

66. The Acts relating to the Militia were consolidated in 1761 (*b*), and again in 1786, when the greater number of the regiments had been raised (*c*), and the utility of the force was emphatically recognised by Parliament in the preamble to the consolidating Act (*d*). The Acts were again consolidated in 1802, after the peace of Amiens by 42 Geo. III, c. 90, which Act, as subsequently amended (*e*) is still in force as regards the ballot. Between 1802 and the peace in 1815, numerous additional Acts were passed with respect to the militia, some of which were of a permanent character, but the greater number were temporary measures, and had reference either to the relations between the militia and the other forces then raised under certain special Acts, or to enlistment from the militia into the army (*f*). Consolidation of Militia Acts.

67. After the peace of 1815 the militia was allowed practically to fall into abeyance, although the permanent staff were maintained. The first step was to allow the Third period, 1815–1852

(*a*) Clode, *Mil. Forces*, i. 40.

(*b*) By 2 Geo. III, c. 20, which was at first enacted for seven years only, but was made perpetual by 9 Geo. III, c. 42. It was amended by 4 Geo. III, c. 17; 5 Geo. III, cc. 34, 36; 6 Geo. III, c. 30; 7 Geo. III, cc. 13, 17; 9 Geo. III, c. 42; 11 Geo. III, c. 32; 16 Geo. III, c. 3; 18 Geo. III, cc. 14, 59; 19 Geo. III, cc. 72, 76; 20 Geo. III, cc. 8, 44; 21 Geo. III, cc. 7, 18; 22 Geo. III, cc. 6, 62; 24 Geo. III, sess. 1, c. 13.

(*c*) In the circular of 30th April, 1833 (printed in Clode's *Militia Act*, 1875), the regiments are described as having been raised as follows: 47 before the peace of 1763, 22 between the peace of 1763 and the peace of 1783, and 21 for the revolutionary war. This circular announced their precedence as settled by lot.

(*d*) See Clode, *Mil. Forces*, i. 43. The Acts of 1786 (26 Geo. III, c. 107) was amended by 33 Geo. III, c. 8; 34 Geo. III, cc. 16, 47; 35 Geo. III, c. 83; 38 Geo. III, c. 53; 39 Geo. III, cc. 90, 103; 39 & 40 Geo. III, c. 1; 42 Geo. III, c. 12. In addition to these Acts, several Acts were passed relating to the supplementary militia, i.e., an addition to the militia above the quota, and also Acts relating to the militia of particular localities which still have separate militia corps, namely—

(1) The City of London, 34 Geo. III, c. 81, and 35 Geo. III, c. 27, which were consolidated by 36 Geo. III, c. 92, and that Act as amended by 39 Geo. III, c. 82, was saved in 1802 by 42 Geo. III, c. 90, s. 153, but was repealed in 1820 by 1 Geo. IV, c. 100, which is still partly in force. See *Militia Act*, 1882, s. 49.

(2) The Tower Hamlets, 37 Geo. III, cc. 25, 75, the former of which is still partly in force (see *Militia Act*, 1882, s. 49); and

(3) The Militia in the Stannaries known as the "Regiment of Miners," 35 Geo. III, c. 74, and 42 Geo. III, c. 72, the latter of which recites that a great length of time had elapsed since any commission had issued to the Warden of the Stannaries to arrav, arm, and exercise the miners. This Act is still partly in force. See *Militia Act*, 1882, s. 49.

(*e*) See especially 43 Geo. III, c. 50; 51 Geo. III, c. 118; 15 & 16 Vict. c. 50; 23 & 24 Vict. c. 120.

(*f*) See 43 Geo. III, c. 10, c. 19, c. 47, c. 50, c. 100; 44 Geo. III, c. 54, s. 16, c. 56; 45 Geo. III, c. 31; 46 Geo. III, c. 91, c. 140; 47 Geo. III, s.ss. 2, c. 57, c. 71; 49 Geo. III, c. 4, c. 53; 50 Geo. III, cc. 24, 25; 51 Geo. III, c. 17, c. 20, c. 118, c. 128; 53 Geo. III, c. 81; 54 Geo. III, c. 11; 55 Geo. III, c. 65, c. 168. As to these Acts, their reasons and effect, see Clode, *Mil. Forces*, i. 287. Besides the above, there were Acts relating to Scotland and Ireland.

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Fourth
period.
Re-organ-
isation of the
militia in
1852.

annual training to be suspended by Order in Council (*a*). Then, from 1829 to 1865, an Act, was passed annually suspending all proceedings for raising the militia by ballot, unless ordered by Order in Council, and the Act of that year has since been annually continued by the Expiring Laws Continuance Act (*b*).

68. In 1848 some excitement was felt with respect to the military position of the country in consequence of the great increase of armaments on the Continent, particularly in France. The subject was mentioned in Parliament, and the Prime Minister (Lord John Russell), in making his financial statement in 1848, expressed his intention of introducing a Bill for re-establishing the militia. Nothing, however, was done until 1852, when he proposed to re-organise the local militia, but this proposal was rejected by the House of Commons, in favour of an amendment (proposed by Lord Palmerston) to re-organise the regular militia. This vote led to a change of Ministry, and the next Ministry, of Lord Derby, introduced a Bill for re-organising the regular militia, which was ultimately passed into law (*c*), and ever since the militia has been raised by voluntary enlistment. The militia law was amended from time to time between 1852 and 1875 by Acts, some portions of which applied to the volunteer militia, and others only to the force when raised by ballot (*d*).

Militia Act,
1875.

69. In 1875 the enactments which related to the volunteer militia, and also those which related to the organisation, command, government, and service of the force, whether raised by ballot or by voluntary enlistment, were consolidated by the Militia Voluntary Enlistment Act 1875 (38 & 39 Vict. c. 69) which has been replaced by the Militia Act, 1882 (45 & 46 Vict. c. 49). Both of these Acts left unrepealed those enactments which related solely to the raising of men by ballot.

Raising of
the militia,
Act of 1662.

70. The Act of 1662 followed the old law by requiring owners of property to furnish horses, horsemen, foot

(*a*) First, by a temporary Act, in 1816 (56 Geo. III, c. 64), and in 1817 by a permanent Act (57 Geo. III, c. 57), under which orders for suspension were made in almost every year.

(*b*) 10 Geo. IV, c. 10. Orders in Council directing a ballot were made in 1830 and 1831 (Clode, Mil. Forces, i. 47; Parly. Papers, 1834, vol. 42, 103). The Act of 1865 is 28 & 29 Vict. c. 46. The number of the permanent staff was reduced by the Act of 1829, and again in 1835 by 5 & 6 Will. IV, c. 37, which also provided for the militia stores of a county being transferred to the Ordnance Department.

(*c*) 15 & 16 Vict. c. 50. See Hansard's Parly. Debates for the years 1848 and 1852; Clode, Mil. Forces, i. 46, 305-307.

(*d*) See 16 & 17 Vict. cc. 116, 133 (England); 17 & 18 Vict. c. 13, c. 105 (England); c. 106 (Scotland); c. 107 (Ireland); 18 & 19 Vict. c. 19 (Ireland); c. 100; 22 & 23 Vict. c. 38; 23 & 24 Vict. c. 94; c. 120 (England); 32 & 33 Vict. c. 13; 33 & 34 Vict. c. 68; 34 & 35 Vict. c. 86; 36 & 37 Vict. c. 68.

soldiers, and arms as specified in the Act, in proportion to the value of their property ; and the liability of persons of small property was to be discharged out of a rate levied in the parish for foot soldiers and arms. The Act, though not expressly recognising volunteers, enacted that a person liable should not be obliged to serve in person, but might provide an approved substitute.

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71. In 1757 the mode of raising the men was entirely changed, a liability on the part of the county and parish to provide men being substituted for a liability on the part of individuals. A certain number of men specified in the Act (usually known as the quota) were to be raised in each county, subject to certain powers of re-adjustment by the Privy Council. Lists of all men between the ages of eighteen and fifty in every parish in each county (except those expressly exempted) were to be sent to the lord lieutenant and the deputy-lieutenants, who were to hold meetings, and apportion the quota of the county among the different sub-divisions, and again sub-divide the quota of each sub-division among the parishes in proportion to their population, and then choose men by lot from each parish list up to the number apportioned to that parish. Every man so chosen had to serve for three years, or to provide a substitute, and vacancies were to be filled from time to time by a like process of ballot, which was to be repeated every three years. The above is practically the existing ballot system, although it has been frequently modified in details. Thus, the age of men liable to serve has been altered from time to time, and is at present under the Act of 1860 (*a*), fixed between 18 and 30. Exemptions also have been added ; as, for instance, the exemption of a poor man with more than one child (*b*). On the other hand, the term of service was extended from three years to five.

Alteration in mode of raising men in 1757.

72. In 1761 the raising of the militia was made compulsory by the imposition on counties of an annual fine for not raising the quota (*c*). This fine was at first 5*l.* for each man deficient, at one period it was as high as 60*l.*, and is now 10*l.* per man.

Fine for not raising quota.

73. Besides the substitutes allowed ever since 1662, the Act of 1758 enabled a parish to offer volunteers, and if they were accepted, to escape to that extent the liability

Volunteers recognised by Act of 1758.

(*a*) 23 & 24 Vict. c. 120.

(*b*) 42 Geo. III, c. 90, s. 43. At first Protestants alone were capable of serving ; this restriction was abolished in 1797 for the supplementary militia (37 Geo. III, c. 22) ; and in 1802 for the regular militia.

(*c*) 2 Geo. III, c. 20, and amending Acts above p. 233, note (*b*). This was re-enacted in 1769 (9 Geo. III, c. 42, which Act states that militia had not been raised in some counties), and again on the consolidation of 1786 (26 Geo. III, c. 107, s. 116, &c.), and at the beginning of the present century, 42 Geo. III, c. 90, s. 158 ; c. 91, s. 150 (as to Scotland).

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to a ballot. If a volunteer so accepted failed to appear and be sworn and enrolled, the parish was bound to find another, or to pay out of the rates a fine of 10*l.* (a). The Act of 1758 further empowered captains, on the embodiment of the militia, to augment their companies by volunteers, and this and the amending Acts enabled lords lieutenants of counties to accept, first, single volunteers, and then whole companies of volunteers with their officers (b).

Changes in
system
during
present
century.

74. At the end of the 18th century these volunteers developed into a separate force under separate Acts; but again, in 1810, the enlistment in the militia of volunteers by beat of drum as supernumeraries, to a number exceeding the regular quota, was authorised. The militia was thus a force raised by ballot with the subsidiary aid of voluntary enlistment. In 1852, however, the system was changed, and the militia became a force of voluntarily enlisted men, with the ballot in reserve, as the Act of that year empowered the Crown in England to resort to the ballot, in case the quota in any county was not raised by voluntary enlistment, and also in case of invasion or imminent danger. In 1854 Acts were passed which provided for the raising of militiamen both in Scotland and Ireland by voluntary enlistment (c).

The present militia consists entirely of men voluntarily enlisted under the directions of the Secretary of State for War; the suspension of the enactments as to the ballot being annually continued (see para. 67).

Numbers of
the militia.

75. In 1662, the number of men to be raised was not limited except so far as it depended on the wealth and number of the persons liable to furnish or contribute to furnish men and horses.

Quotas
under
various Acts
since 1757.

76. In 1757, the number to be raised was limited by the Act which fixed the quota to be raised by each county. The quota was altered from time to time; and in 1797 an addition to the quota, called the supplementary militia, was made, to last during the war, but it was soon merged in the regular militia (d). Under the Act of 1802 the

(a) 31 Geo. II, c. 26, s. 17. A parish might practically discharge its liability to provide militiamen by paying the fine for the non-attendance of a volunteer which under 31 Geo. II, c. 26, as stated in the text, was 10*l.* per head; and in 1761 and subsequently, parishes were authorised to give bounties out of the rates to volunteers; this led also to half of the current price of a volunteer being paid out of the rates to a balloted man or a substitute; 2 Geo. III, c. 20, ss. 45, 47; 42 Geo. III, c. 90, ss. 42, 122.

(b) 2 Geo. III, c. 20, s. 120; 18 Geo. III, c. 59, s. 8; 19 Geo. III, c. 76; these provisions were not re-enacted in the consolidation of 1786, but the power was renewed temporarily by 34 Geo. III, c. 16, which developed the volunteers as a separate force. See Clode, *Mil. Forces*, i. 80; and below, para. 110, *et seq.*

(c) 17 & 18 Vict. cc. 106, 107.

(d) 37 Geo. III, c. 3, amended by 37 Geo. III, c. 22, and 38 Geo. III, cc. 17, 18, 19, 55; merged in the general militia by 39 Geo. III, c. 106.

Privy Council were to fix the quota every ten years, guided by the proportion between the number of men liable to serve (as appearing from the lists) and the quota fixed by the Act, and the Crown had power to increase the quota in time of invasion or rebellion. The Acts from 1852 to 1860, re-organising the militia, fixed the total number to be raised, with power to the Queen to increase it in case of actual invasion or imminent danger thereof (*a*).

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77. The Act of 1871 (now re-enacted in the Militia Act, 1882), directed that the numbers of the militia should be such as should from time to time be provided by Parliament (*b*), and such provision is in effect made by a vote of the sum required for the pay of a specified number of men, and the application of such sum by the Annual Appropriation Act. The quotas (which are only required in the event of a ballot) are to be fixed by the Privy Council (*c*); the existing quota was fixed in 1852, and continues until altered.

Numbers under Act of 1871.

78. Under the Act of 1662 militiamen were liable to be called out for training and exercise, and also in the case of invasion, insurrection, or rebellion.

Conditions of service.

79. In 1757 the service of the militia was placed nearly in the position in which it remained until 1870, that is to say, the force was to be annually trained and exercised for a limited time, while in case of actual invasion or imminent danger thereof, or in case of rebellion, the Crown could order the force, or any part of it, to be drawn out and embodied. The period for the annual training was originally fixed in the Act, but afterwards left to be determined by the Crown; it must not be less than 21, nor more than 56 days, and the Crown can dispense with it entirely. In 1860 a preliminary training was required from every militiaman on his first entering the force, and this may now be continued as long as six months (*d*).

Annual training.

80. The power of embodying the force in cases other than those before mentioned, after having been conferred on the Crown at various times by temporary measures (*e*), has now been permanently enacted. In 1854 (the Crimean War), the Queen was authorised to embody the militia whenever a state of war existed between Her Majesty

Power to embody.

(a) 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 106, 107; 23 and 24 Vict. c. 94, ss. 20 & 21.

(b) 34 & 35 Vict. c. 86, ss. 6, 7, 9, re-enacted by 45 & 46 Vict. c. 49, s. 3.

(c) 45 & 46 Vict. c. 49, s. 37.

(d) 23 & 24 Vict. c. 4, s. 14; c. 120, s. 19; 34 & 35 Vict. c. 86, s. 8; see now 45 & 46 Vict. c. 49, s. 14.

(e) In 1776, with a view to the suppression of the rebellion in America, embodiment was authorised, in case of rebellion in Great Britain or any territories or dominions thereunto belonging, by 16 Geo. III. c. 3; in 1815 on "the prospect of a war with France," by 55 Geo. III. c. 77 (see Clode, *Mil. Forces*, i. 48); in 1857 and 1858, on the occasion of the Indian Mutiny, 20 & 21 Vict. c. 82; 21 & 22 Vict. cc. 4, 86.

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and any foreign power (*a*); but in 1870 the old provisions were superseded by the enactments authorising the embodiment in case of imminent national danger or great emergency, which were re-enacted in 1882, and are now in force (*b*). Ever since 1757 the law has required that the cause of embodiment should be communicated to Parliament if sitting, or declared in Council and notified by proclamation if Parliament is not sitting, and that, thereupon, Parliament, if adjourned or prorogued, should meet within a limited time, which now is 10 days (*c*).

Militia
liable to
serve only
in United
Kingdom.

81. The militia are liable to serve in any part of the kingdom, but not out of it; and under this rule, the English militia were originally not liable to serve in Scotland or Ireland. The militia must now serve in any part of the United Kingdom (*d*). This was first provided in 1811 (*e*), subject to certain restrictions, and then in 1859 (*f*) without those restrictions, which were entirely repealed by the Act of 1875. In 1859 a power was given to the Sovereign to accept voluntary offers by the militia to serve in the Channel Islands and the Isle of Man; this was extended by the Act of 1875 to service in Malta and Gibraltar; and as so extended was re-enacted in 1882 (*g*).

(*a*) 17 & 18 Vict. c. 13. As to the effect of this on the men already enlisted, see Clode, *Mil. Forces*, i. 46.

(*b*) 33 & 34 Vict. c. 68, which did not apply to any man already enlisted, without his consent. The authority in this Act to raise additional militia in case of imminent national danger or great emergency was not re-enacted on the repeal of the Act in 1875, having been rendered unnecessary by the Act of 1871, declaring that the number of the force shall be such as may from time to time be provided by Parliament. The present enactments are in 45 & 46 Vict. c. 19, s. 18.

(*c*) 45 & 46 Vict. c. 49, s. 19.

(*d*) 45 & 46 Vict. c. 49, s. 12, re-enacting 38 & 39 Vict. c. 69, s. 49. The oath for balloted men in 51 Geo. III, c. 118, s. 1, and for volunteer militiamen in 38 & 39 Vict. c. 69, s. 31, specified the area of service, but this being inconsistent with the provisions for volunteer service in Gibraltar, Malta, &c., was omitted by 45 and 46 Vict. c. 49, s. 13. Since 1757 the English militia have been liable to serve in Scotland.

(*e*) 51 Geo. III, cc. 118, 128; 51 Geo. III, c. 114. (Regiment of Miners); 53 Geo. III, c. 132 (Tower Hamlets); 54 Geo. III, c. 10. See Clode, *Mil. Forces*, i. 301, 302, as to the opposition to the Acts. The principle had been adopted in temporary Acts, as in 1798, when some English regiments volunteered to serve in Ireland, and Acts were passed by the Parliament of Great Britain to enable His Majesty to accept the offer, and by the Parliament of Ireland to provide for the government of the forces so employed (38 Geo. III, c. 66, continued by 39 Geo. III, c. 5; 39 & 40 Geo. III, cc. 9, 15; 38 Geo. III (I.), c. 46; 39 Geo. III (I.), c. 64, ss. 13, 14). And again, in 1799 and 1804 and the following years, when some of the Irish regiments volunteered to serve in Great Britain, and Acts were passed to enable His Majesty to accept the offers (39 Geo. III (I.), c. 31; 44 Geo. III, c. 32, continued by 46 Geo. III, c. 31; 47 Geo. III, sess. 1, c. 6).

(*f*) 22 & 23 Vict. c. 38, ss. 1, 2.

(*g*) 22 & 23 Vict. c. 38, s. 4; 38 & 39 Vict. c. 69, s. 50; 45 & 46 Vict. c. 49, s. 12. A similar power had been given temporarily at the time of war in 1813 (54 Geo. III, cc. 1, 17), in 1855 (18 & 19 Vict. c. 1), and in 1858 (21 & 22 Vict. c. 85). In these cases, however, the number was limited to three-fourths of each regiment, though the area of service extended in the first case to Europe, and in the second and third cases to any place out of the United Kingdom.

82. A fixed term of service was first provided in 1757, **Ch. IX.** and was then limited to three years, but afterwards increased to five years, at which it at present stands for balloted men. In 1873 power was given to enlist volunteer militiamen to serve for any period not exceeding six years, and to re-enlist men for a further period not exceeding six years (*a*). Term of service.

83. The Act of 1661, temporarily legalising the militia under Charles II, referred to the dispute with Charles I as to the command of the militia, first by its title, in which it was described as "An Act declaring the sole right of the militia to be in the king, and for the present ordering and disposing the same"; and also by its preamble, which was expressed as follows: "Forasmuch as within all His Majesty's realmes and dominions the sole supreme government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength is, and by the lawes of England ever was, the undoubted right of His Majesty and his royall predecessors, Kings and Queenes of England, and that both or either of the Houses of Parliament cannot nor ought to pretend to the same, nor can nor lawfully may raise or leavy any warr, offensive or defensive, against His Majesty, his heires, or lawful successors" (*b*). Command of militia.
Act of 1661.

84. The Act of 1662, which, re-organised the militia, while recognising by a preamble in identical terms the right of the Crown, practically took it away. It required the King under statutory power to issue Commissions of Lieutenancy for the different counties in England, and conferred on the lieutenants so appointed the chief powers in relation to the militia. They were empowered to commission the officers, raise the men, form the regiments, muster and exercise them, and in case of insurrection or invasion, to lead the forces as well within their counties as in any other counties in England. The result of the chief powers being vested in the lieutenants of counties was that the militia was regarded as a counterpoise of the standing army (*c*), and as a constitutional force under the control of Parliament rather than of the Crown, and for this reason was not made subject to military law (*d*). Powers of
Lord Lieutenants
under Act
of 1662.

(*a*) 36 & 37 Vict. c. 63, s. 1 (which uses the old term "enrol") re-enacted in 1875, 38 & 39 Vict. c. 69, s. 32, and in 1882, 45 & 46 Vict. c. 49, s. 8.

(*b*) 13 Cha. II, stat. 1, c. 6. This preamble, which in terms goes beyond the title of the Act, and includes forces besides the militia, is still unrepealed. The rest of the Act was repealed by the Statute Law Revision Act, 1863 (26 and 27 Vict. c. 125).

(*c*) Clode, *Mil. Forces*, i. 36, 37.

(*d*) See exemption from the Mutiny Act, 1 Will. and Mar., c. 5, s. 7. The pay was appropriated by Act of Parliament and not by warrant, and the estimates originated with a Committee of the House of Commons. Moreover, only one month's pay and therefore one month's service could

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Powers of
Crown.

Changes in
1852 and
subse-
quently.

Powers of
Lord Lieu-
tenant
re-vested in
Crown by
Act of 1871.

85. A power was indeed reserved to the King to appoint and remove the officers, and to give directions to the lieutenants as to arraying and dealing with the forces. But the Act of 1757 (*a*) limited this, leaving to the Crown only the power to approve and dismiss deputy lieutenants and to dismiss officers, while the local character of the force was intensified by requiring the lieutenants of counties and deputy lieutenants and officers to be qualified by the possession of landed property in their counties. On the other hand, the King was empowered to place the force, when embodied, but not during the annual training, under the command of a general officer; and had also power to appoint former officers and soldiers of the army to be adjutants and sergeants.

86. The command of the militia remained in the same position until 1852, with the exception that ex-officers of the army and navy were permitted to serve without the property qualification. After the revival, however, of the militia in 1852, a change was made. The property qualification of the officers was reduced, and, after a further reduction in 1854, was entirely abolished in 1869, so that the officers ceased to be necessarily connected with the county or with the landed interest (*b*). Moreover, by the Act of 1852 and subsequent Acts, much larger powers were conferred on the Crown, both as to the qualifications and training of the officers, and as to other matters concerning the militia (*c*); but any detailed notice of these powers is rendered unnecessary by the complete transfer of the powers of the lieutenants of counties to the Crown by the Act of 1871 (*d*).

87. In 1871 it was determined to combine the regular and auxiliary forces in one organisation in connection with different territorial districts. In furtherance of this scheme an Act was passed (*d*), by which the command of the auxiliary forces with all the powers of the Lieutenants of counties and those of the Lord Lieutenant in Ireland in

be obtained without coming to Parliament. The preamble to the Act of 1802 laid stress on the force being under the command of officers having landed property.

(*a*) 30 Geo. II, c. 25.

(*b*) 15 & 16 Vict. c. 50, ss. 1-4; 17 & 18 Vict. c. 105, s. 31; c. 106, ss. 6-11 (Scotland); c. 107, ss. 5-7 (Ireland); 18 & 19 Vict. c. 100 (which made the qualifications uniform throughout the United Kingdom); 32 & 33 Vict. c. 13.

(*c*) As to appointment of officers, training and bounties to, and pay of men while not embodied, 15 & 16 Vict. c. 50; 17 & 18 Vict. cc. 13, 105, 106, 107. As to discharge of militiamen, 16 & 17 Vict. c. 13, s. 9; 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25. As to place and time of training, 22 & 23 Vict. c. 38, s. 8. As to placing the force during training under the command of general officers, and attaching officers of regulars to the force during training, 32 & 33 Vict. c. 13, ss. 1, 2.

(*d*) 34 & 35 Vict. c. 86, s. 6, repeated in 38 & 39 Vict. c. 69, s. 21, and re-enacted by 45 & 46 Vict. c. 49; ss. 4-6 as to general militia, and 3rd sch. as to local militia.

relation to any of such forces (except those relating to the raising of the militia by ballot), were re-vested in the Crown, and declared to be exercisable through a Secretary of State, or any officers to whom Her Majesty, with the advice of a Secretary of State, might delegate such command and powers. The same Act also provided that the officers of the auxiliary forces should hold commissions from the Queen in the same manner as the officers of the regular forces; but a limited right of recommending persons for first commissions was reserved to the Lieutenants of counties.

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88. Up to 1882 it was provided by statute that militia officers should rank with officers of the regular forces as the youngest of their rank (*a*); militia officers are now not only commissioned like officers of the regular forces, but are always subject to military law, and they may sit on courts-martial for the trial of offenders belonging to the regular forces, and *vice versa* (*b*).

Status of militia officers.

89. The Army Act, to remove all doubt as to the power of command, declares that the Queen may make regulations as to the persons to exercise command over any part of Her forces, including the militia (*c*). The Militia Act 1875 and the Regulation of the Forces Act 1881 (re-enacted in 1882), also gave the Queen complete power to provide for the formation of militiamen into regiments or other military bodies, the formation of them into corps, and the distribution of the men among the corps, and generally for the government of the force (*d*).

Provisions of Act of 1881.

90. The Act of 1662 authorised Lieutenants of counties to imprison mutineers and soldiers not doing their duties, and to inflict small fines or twenty days' imprisonment as a punishment; but it was not till 1757 that the force was made, when embodied, subject to the Mutiny Act and Articles of War. Except during embodiment, the men were subject only to civil fines, for drunkenness, disobedience, absence, &c. In 1761, however, the Mutiny Act was applied to the militia when out for training as well as when embodied. Men, however, who failed to appear were only liable to a fine till 1786, when they became liable in case of embodiment to be tried for desertion under the Mutiny Act (*e*).

Militia not subject to Mutiny Act at all till 1757.

91. Since 1852 the militia has by degrees been brought

Militia brought

(*a*) 38 & 39 Vict. c. 69, s. 21. This was provided by the Act of 1757, but omitted from 45 & 46 Vict. c. 49, as rank is a matter for regulation by the Sovereign.

(*b*) Army Act, ss. 50, 175, 178.

(*c*) Army Act, s. 71.

(*d*) 38 & 39 Vict. c. 69, s. 86; 44 & 45 Vict. c. 57, s. 4; re-enacted in 45 & 46 Vict. c. 49, s. 54.

(*e*) 2 Geo. III, c. 20, s. 99; 26 Geo. III, c. 107, s. 98.

(M.L.)

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— —
more under
military law
since 1852.

more completely under military law (a), and now under the Army Act, militia officers are at all times subject to the Act, and militiamen are subject to it during their preliminary training, during their annual training when acting with the regular forces, and during embodiment (b); while militiamen who fail to appear at their preliminary or annual training or on embodiment are punishable either for desertion or for absence without leave, as the case may be, and either by a military or civil court (c). The old exemption of militiamen from capital punishment during annual training is omitted from the Acts as unnecessary, because desertion and such like military offences are not capitally punishable, except on active service (d).

Payment of
expenses of
militia.

92. The expense of the militia was in 1662 divided between individuals (owners of property), counties, and parishes on the one hand, and the Crown on the other; the former provided equipments, horses, ammunition, &c., and pay for the annual training, while the Crown supplied pay in case of embodiment (e).

Act of 1758.

93. In 1757 a different principle was adopted, and a separate Act was passed authorising the issue from the Exchequer and application of a sum for the pay, clothing, and expenses of the militia, and this Act was continued annually till 1874. The passing of this Act, for long merely a formal matter, became entirely meaningless after the militia were placed under the command of the Crown in 1871, and it was accordingly provided in 1874 that the pay and clothing of the militia should be regulated by Royal Warrant, orders, and regulations in the same manner as the pay and clothing of the regular forces (f).

(a) In 1854, men who failed to appear at the annual training were declared deserters, and made liable to a fine of 10*l*. (17 & 18 Vict. c. 105, s. 45; c. 106, s. 58; c. 107, s. 28). In 1875, militiamen during their preliminary training were made subject to the Mutiny Act by 38 & 39 Vict. c. 7, s. 2, the Mutiny Act of the year, and if they failed to appear at the preliminary training were made triable as deserters, 38 & 39 Vict. c. 69, s. 59. Militia officers were made at all times subject to military law by the Mutiny Act of 1877, 40 & 41 Vict. c. 7, s. 2.

(b) Army Act, s. 176 (6).

(c) 45 & 46 Vict. c. 49, ss. 23, 24, re-enacting Regulation of the Forces Act, 1881, s. 5.

(d) At one time, militia deserters might be sentenced to serve in the regular forces, 39 Geo. III, c. 106; 49 Geo. III, c. 90, s. 127, repealed in 1875; and 43 Geo. III, c. 50, s. 5, only repealed in 1882.

(e) Individuals were liable to advance one month's pay; and the Act provided that until this month's advance was repaid no further advance was to be required. This led to a difficulty in calling out the militia, which was removed by a temporary Act, 2 Will. & Mar., sess. 2, c. 12, re-enacted almost annually during the reigns of Will. & Mar. and Anne. Similar provisions were again made in 1715, 1 Geo. I, stat. 2, c. 14, revived in 1723, 9 Geo. I, c. 8, s. 6, and again in 1733, 7 Geo. II, c. 23, and in 1745, 19 Geo. II, c. 2. The money raised by the county was known as "trophy money."

(f) 37 & 38 Vict. c. 29. See also 33 & 39 Vict. c. 69, s. 86. The then existing Acts were 31 & 32 Vict. c. 76; 32 & 33 Vict. c. 66; and 36 & 37 Vict. c. 84, which had been annually continued by the Expiring Laws

94. The storage of the arms, clothing, and equipments of the militia was in 1757 made a charge on the parishes ; but in 1786 was transferred to the counties ; and provision was then made for the permanent staff residing on the spot and taking care of the arms. After the change of system in 1871 (*a*) the counties were relieved from this, as well as other charges connected with the militia, and by Acts passed in 1872 and 1873 provision was made for the purchase of lands and the erection of barracks at the public expense, and the counties were authorised to transfer their storehouses to the Crown, or to sell them (*b*).

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Storage of arms, &c., a local charge till 1871.

95. Ever since 1757 the officers and men have been allowed during the annual training and during embodiment to be billeted like the regular forces, and the permanent staff may be billeted at all times.

Billeting.

96. Various enactments were made for relieving out of the poor rates families of militiamen when embodied or out for training ; but this system, on the reform of the Poor Law in 1834, was abolished by the Poor Law Amendment Act of that year (*c*).

Relief of families of militiamen.

97. When every parish was obliged to raise a certain number of militiamen, the discharge of a militiaman or his enlistment into the army necessarily threw on the parish the burden of providing another man. The power of discharge was therefore jealously watched, and the enlistment of a militiaman into the army was either prohibited, or very much restricted. At the same time individuals desirous to find substitutes, and parishes desirous to avoid a ballot, although forbidden to enlist men by beat of drum, competed for recruits with the recruiting officers of the regular army, and thus in time of war the bounty for recruits was raised to a very high sum (*d*).

Enlistment of militiamen into the army.

98. In 1795 a change of policy took place, and subject to certain limitations, the enlistment of militiamen in the army was encouraged ; and, in order to replace militiamen so enlisting, militia officers were authorised to enlist men by beat of drum (*e*).

Act of 1795.

Continuance Act, and were to have effect as a Royal Warrant, until a new Warrant was made.

(*a*) By 34 & 35 Vict. c. 86.

(*b*) 35 & 36 Vict. c. 68 ; 36 & 37 Vict. c. 68, s. 8 ; 36 & 37 Vict. c. 84.

(*c*) See 43 Geo. III, c. 47, which consolidated the old enactments, and was repealed by 4 & 5 Will. IV, c. 76, s. 90, and by 38 & 39 Vict. c. 69, s. 98.

(*d*) The ballot had thus a bad effect on enlistment for the army. See Clode, *Mil. Forces*, i. 289.

(*e*) In 1795, 35 Geo. III, c. 83. Such enlistment was also authorised by the Acts relating to the supplementary militia, 39 Geo. III, c. 106 ; 39 & 40 Geo. III, c. 1. The Consolidation Act of 1802 (42 Geo. III, c. 90) prohibited the enlistment, but authority to enlist men was given by a series of Acts from 1805 to 1813. 45 Geo. III, c. 31 ; 46 Geo. III, c. 124 ; 47 Geo. III,

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Acts of 1852
and 1854.

99. Long after this, however, and even after the change of system in 1852, the old prohibition against the enlistment of militiamen in the army remained in force, although with a voluntarily enlisted militia the reason had disappeared. On the breaking out of war in 1854 prosecutions were instituted against militiamen who had enlisted in the army, and legislation was required to enable the Secretary at War to relieve from punishment the men who had so enlisted (*a*).

Act of 1875.

100. Further legislation authorised enlistment in the Army; and by the Act of 1875 the enlistment of volunteer militiamen in the army was, as well as their discharge from the militia, placed entirely under the direction of the Secretary of State for War (*b*).

Acts for
raising
forces to
meet appre-
hended
French
invasion,
1796-1812.

101. At the end of the last and beginning of the present century various Acts were passed for raising forces to resist the threatened French invasion, which were based on the liability of every man to aid in the defence of the realm, either by personal service or by contributions (*c*).

Acts estab-
lishing local
militia.

102. They were superseded in 1808 by Acts establishing a local militia in England and Scotland. These Acts were amended in the following years (*d*), and were finally consolidated in 1812. The general provisions of the Acts passed in that year (*e*) are still in force, though the local militia is in abeyance.

Account of
local
militia.

103. The local militia is in effect the old general levy, as the Acts provide for raising a force in each county by

sess. 2, c. 57; 48 Geo. III, c. 64; 49 Geo. III, c. 4; 49 Geo. III, c. 53, s. 32; 51 Geo. III, cc. 20, 30; 53 Geo. III, c. 81; 54 Geo. III, cc. 1, 38.

(*a*) 17 & 18 Vict. c. 105, s. 42; c. 106, s. 61; c. 107, s. 25.

(*b*) 23 & 24 Vict. c. 94, s. 17; 38 & 39 Vict. c. 69, ss. 75, 76.

(*c*) 47 Geo. III, cc. 4 and 24, and as to Scotland, cc. 5, 39. In 1797 a force of provisional cavalry was to be raised as an augmentation to the militia under 37 Geo. III, cc. 6, 23, 139; 38 Geo. III, cc. 51, 94; 39 Geo. III, c. 23. As to returns of men, provisions, &c., 38 Geo. III, c. 37; 43 Geo. III, c. 55. An army of reserve was provided by 43 Geo. III, cc. 82, 100, 123, and 43 Geo. III, c. 56; and as to Scotland, 43 Geo. III, cc. 83, 124; 44 Geo. III, c. 66; and as to Ireland, 43 Geo. III, c. 85; 44 Geo. III, c. 74; and as to the City of London, 43 Geo. III, c. 101; 44 Geo. III, c. 96; the first of which recites that the City, notwithstanding their exemption from the liability to provide men for military service, have offered to raise the force mentioned in the Act. A levy *en masse* was provided for by 43 Geo. III, c. 96, amended by c. 120. The first Act recites that it is expedient "to enable His Majesty more effectually to exercise his ancient and undoubted prerogative of requiring the military service of all his liege subjects in case of an invasion of the realm by a foreign enemy," extended to the City of London by 46 Geo. III, c. 125. The foregoing Acts were repealed in 1806 by 46 Geo. III, cc. 51, 63, 90, 144; and the Training Act (46 Geo. III, c. 90) was passed, which was only repealed in 1872 by the Statute Law Revision Act (35 & 36 Vict. c. 63), but was never put in force.

(*d*) 48 Geo. III, c. 111; and as to Scotland, c. 150; amended by 49 Geo. III, cc. 40, 48, 82, 129, and 50 Geo. III, c. 25. See Clode, *Mil. Forces*, i. 325-332.

(*e*) 52 Geo. III, c. 38; and as to Scotland, c. 68. See also the Amendment Acts, 52 Geo. III, c. 116; 53 Geo. III, cc. 28, 28, and 45 & 46 Vict. c. 49, 3rd sched.

ballot, in the same manner as under the general Militia Acts, from among men between the ages of 18 and 30. The number in each county, including any effective yeomanry and volunteers in the county, was to be equal to six times the quota fixed for the regular militia of the county, but since 1871, is to consist of such number of men as may from time to time be provided by Parliament (a). A man when drawn in the ballot must serve for four years without any power to find a substitute, and without receiving any bounty. With some exceptions (such as men with previous service, or men with more than two children), there are no exemptions from liability to serve. Parishes may provide volunteers and pay them bounties out of the rates. The counties are liable to an annual fine of 15*l.* for each man short of the quota.

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104. The force is to be annually trained, and may be called out for the suppression of riots, and preliminary training may be required. The force may be embodied in case of invasion or the appearance of an enemy on the coast, and in case of rebellion; Parliament is to meet within fourteen days after the order for embodiment (b). As regards command, officers, and discipline, the local militia is almost precisely in the same position as the general militia (c), and the force whenever called out is subject to military law. The property qualification of officers was abolished by 32 and 33 Vict. c. 13. The expenses were to be paid by the Crown, and the storage of arms, which was formerly a county charge, is now also borne by the Crown (d).

Training, command, and embodiment.

105. After the peace in 1815 the King in Council was authorised (e) to suspend the ballot for and enrolment of the local militia, and the force has not since been raised. Orders in Council were made annually under the Act up to the year 1832 (f), when they seem to have been discontinued, and the Act authorising the suspension was repealed as obsolete in 1873 (g).

Not raised since 1815.

106. The early Acts above-mentioned relate only to the militia of England. The militia of Scotland was not

Militia of Scotland

(a) 34 & 35 Vict. c. 86, ss. 7, 8, 19, re-enacted by 45 & 46 Vict. c. 49, 3rd sched.

(b) The Act of 1870 (33 & 34 Vict. c. 68), which allowed the militia to be embodied in case of imminent national danger or great emergency, was repealed by 38 & 39 Vict. c. 69, as if it had not applied to the local militia.

(c) See above para. 83, *et seq.*, and Militia Act, 1882 (45 & 46 Vict. c. 49, 3rd sched.). The Army Act applies to the local as well as to the general militia.

(d) It appears to have been transferred to the Crown, as in the case of the general militia, by 35 & 36 Vict. c. 68.

(e) By 56 Geo. III, c. 38.

(f) Clode, Mil. Forces, i. 333, in which 1836 appears to be a misprint for 1832.

(g) By the Statute Law Revision Act, s. 73, 36 & 37 Vict. c. 91.

Ch. IX. organised by an Act of the Parliament of Great Britain until 1797, though before that time corps of Fencibles were raised and embodied (*a*). In that year an Act was passed (*b*), which as subsequently amended (*c*) provided for raising a force of militia during the war, by ballot among men between the ages of 19 and 30. In 1802 these Acts were replaced by an Act (*d*) providing for the organisation of the militia on a basis similar to that on which the militia of England was organised by the Consolidation Act passed in that year (*e*).

Militia of,
Ireland.
First Act,
1715.

107. The militia of Ireland was first organised in 1715 (*f*), when His Majesty and the Chief Governor were empowered to issue to Protestants commissions of lieutenantancy and array for counties and cities, empowering them to arm and train all Protestants between the ages of 16 and 60, who were bound to appear or find substitutes; and in case of insurrection, rebellion, or invasion to serve in any part of the Kingdom. His Majesty and the Chief Governor were empowered to commission officers and approve of deputy lieutenants, but the command of the force was vested in the lieutenants of counties. Mutiny, non-appearance, and neglect of duty were punishable by fine or imprisonment, and the force was not made subject to military law.

Amending
Acts.

108. This Act was amended in 1719 (*g*) and again in 1745 (*h*), and, as so amended, was continued from time to time until 1777, when it was replaced by an Act (*i*) which seems to have contemplated the raising of men by ballot, though in point of fact it made no provision for raising men otherwise than by voluntary enlistment, and did not fix any term of service. This Act being found insufficient, was repealed and replaced in 1793 by an Act (*k*) which provided for raising a force of militia according to quotas fixed in the Act, by ballot among men between the ages of 18 and 45, to serve for four years. Governors of counties were authorised to array and train the force, and to appoint deputies, subject to the approval of the Lord Lieutenant; and His Majesty was empowered to appoint a commandant for each county, who was authorised to appoint officers, having property qualifications, subject to the approval of the Lord Lieutenant. The force might be embodied in case of invasion, &c., and was during training

(*a*) See preamble to 18 Geo. III, c. 59, s. 4.

(*b*) 37 Geo. III, c. 103.

(*c*) 38 Geo. III, cc. 12, 44; 39 Geo. III, c. 62; 41 Geo. III (U.K.) c. 62.

(*d*) 42 Geo. III, c. 91.

(*e*) 42 Geo. III, c. 90.

(*f*) 2 Geo. I (I), c. 9.

(*g*) 6 Geo. I (I), c. 3.

(*h*) 19 Geo. II (I), c. 9.

(*i*) 17 & 18 Geo. III (I), c. 13.

(*k*) 33 Geo. III (I), c. 22.

and embodiment subject to the Mutiny Act. The raising of the force was made compulsory by clauses imposing a fine of 5*l.* a year on each county for each man deficient, and enlistment in the army was prohibited. This Act of 1793 was amended in 1795 (*a*), and again in every succeeding year till the Union of Ireland with Great Britain in 1801. Ch. IX.
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109. For some years after the Union the force continued to be raised and governed under the ante-Union Acts, as amended by several Acts passed by the Parliament of the United Kingdom (*b*), which encouraged voluntary enlistment by means of bounties to be advanced by the Treasury and repaid by the counties. Finally, all the Acts were consolidated in 1809 by an Act (*c*) which fixed the establishment of each regiment, and provided for raising the men by means of ballot, but gave power to the Lord Lieutenant to authorise the raising of men by voluntary enlistment by means of bounties advanced by the Treasury and repaid by the counties, and also to suspend the raising of any regiment. The Acts since 1852 have been noticed before. Acts after
Union.

Yeomanry and Volunteers.

110. It has been mentioned before that volunteers were accepted in aid of the ballot for the militia, first as individuals, and then as separate companies, but these separate companies formed, in fact, part of the militia (*d*). Besides the above, volunteer corps were raised independently of any Act; some of them were known as Fencibles, and were chiefly raised in Scotland. Enactments were passed, however, to prevent the officers vacating their seats in Parliament by the acceptance of commissions, and to regulate their rank with officers of the militia (*e*). Early
volunteer
corps.

111. In 1794 an Act was passed to provide that any corps of volunteers which had been raised by officers commissioned by the King, or the lieutenant of the county, or by other persons authorised by the King, and which in case of invasion or of riot, should assemble and march, should receive the same pay as the regular forces, and be subject to military discipline; such volunteers were to be exempted from liability to serve in the militia (*f*). These corps, it will be observed, were distinct from the militia. This Act expired at the peace of Amiens; but in 1802 another Act was passed authorising the raising of yeomanry Acts of 1794
and 1802.

(*a*) 35 Geo. III (I), c. 8.

(*b*) 41 Geo. III (U.K.), c. 6; 42 Geo. III, c. 109; 43 Geo. III, cc. 2, 23.

(*c*) 49 Geo. III, c. 120.

(*d*) See 18 Geo. III, c. 59; 19 Geo. III, c. 76; 34 Geo. III, c. 10.

(*e*) 18 Geo. III, c. 59; 35 Geo. III, c. 83, s. 10.

(*f*) 34 Geo. III, c. 31; 38 Geo. III, cc. 27, 51.

Ch. IX. and volunteer corps (*a*). The eagerness to volunteer and the energy with which military preparations were taken up throughout the country for the purpose of resisting the threatened invasion of the French under Napoleon are well known, and upwards of 400,000 men were enrolled (*b*). The men so enrolled were exempted not only from the regular militia, but also from the other forces which, as before mentioned, were organised at this period (*c*), and the allegation was made that by reason of this exemption the volunteers were a disadvantage as interfering with the efficiency of the other forces.

Acts of 1804. 112. In 1804 an Act was passed in the face of considerable opposition for consolidating and amending the Acts relating to the yeomanry and volunteers, and this is the Act under which the yeomanry in Great Britain are now raised and serve (*d*).

**Revival of
volunteers
in 1859.**

113. After the peace of 1814 the foot volunteers fell almost entirely into abeyance; but in 1859, in consequence of a panic respecting the hostile tone of the French army and government and the defenceless state of the country, they were revived, chiefly as rifle volunteers, but partly as light horse, artillery, and engineers. The old Act was soon found unsuitable for the organisation of the new force, and was replaced by an Act of 1863, which was again amended in 1869 and 1881 (*e*).

Billeting.

Billeting. 114. Before concluding this summary some notice must be taken of the practice of billeting, which has at times been of great importance in English history.

**Billeting in
early times.** 115. In early times troops were quartered under an order from the king; or some officer authorised by him, such as the High Harbinger, directed to the civil magistrate of the district, requiring him to provide quarters and provisions. This right to quarter was probably connected with the right of purveyance, and as the need of quartering only arose in time of war, the exercise of the right could not be complained of by those who were liable to serve in person or provide soldiers, arms, and provisions (*f*).

(*a*) 42 Geo. III, c. 86, amended by 43 Geo. III, c. 121; 44 Geo. III, c. 18.
(*b*) Stanhope's Life of Pitt, iv. 77, ch. xxxvi; Clode, Mil. Forces, i. 313, 314.

(*c*) See above, para. 101. As to the relation of these volunteers to the other forces, see Clode, Mil. Forces, i. 312.

(*d*) 44 Geo. III, c. 54, amended by 46 Geo. III, cc. 125, 140; 56 Geo. III, c. 39; 57 Geo. III, cc. 41, 44; 7 Geo. IV, c. 58.

(*e*) The 1st Middlesex and 1st Devonshire rifle volunteers existed some years before 1859. The Honourable Artillery Company also never ceased to exist. The Act of 1863 is 26 & 27 Vict. c. 65; of 1869, 32 & 33 Vict. c. 81; of 1881, 44 & 45 Vict. c. 57.

(*f*) Scott's Brit. Army, ii. 451, and Commissions in Rymer. The word

116. But, like the right of purveyance, the right to quarter was no doubt abused and led to oppression ; and when it came to be enforced to provide quarters for soldiers returning from the wars and without employment, or (as in the reign of Charles I) to punish towns which had displeased the Court by returning unacceptable candidates to Parliament or otherwise (*a*), the abuse became intolerable, and billeting was consequently declared to be illegal by the Petition of Right (*b*).

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Abuse of the practice, and declaration of illegality thereof by Petition of Right.

117. The practice nevertheless continued, though not without remonstrance, during the reign of Charles II (*c*), until 1679, when it was again declared to be illegal by an Act in which Parliament provided money for disbanding the troops, and on condition of such disbandment, granted an indemnity for past illegal quarterings. This declaration of illegality, as well as that in the Petition of Right, is still in force (*d*).

Billeting under Charles II.

118. James II, however, again violated the law, and issued orders for billeting (*e*), which gave rise to one of the complaints against him mentioned in the Bill of Rights (*f*), after which the practice of billeting, except under statutory authority, was discontinued. The prevalence of the practice of billeting in the reigns of Charles II and James II arose from the necessity of providing quarters for the troops they maintained in time of peace ; and the complaints of the illegality of the practice were intensified by such troops being maintained without the consent of Parliament.

Billeting under James II.

119. When a standing army was, as before mentioned, authorised by Parliament after the Revolution, it became necessary to make legal provision for the accommodation of the army, as the barrack accommodation was insufficient, and accordingly, in the year 1689, the second Mutiny Act (*g*) authorised billeting. That Act, while affirming the illegality of billeting, as declared by the Petition of Right and the Act of Charles II, recited that there was "occasion for the marching of many regiments, troops, and companies in several parts of this kingdom towards

Billeting first authorised by Parliament in Mutiny Act, 1689.

"billet" is a diminution of "bill," a note, and is not derived from bill, Latin *billus*, a stick used by slaves, nor from its derivative "billet," a wedge of gold or a log of wood, the size of which was fixed by the Acts 27 Edw. III, stat. 2, c. 14, and 43 Eliz. c. 14, to be 3 ft. 4 in. by 7½ in. (Wedgwood's Etym. Dict.). The French word is derived from the English (Littre). The word in relation to the quartering of troops used by Shakespeare, *Othello*, Act. ii, Sc. 3.

(a) See Forster's Life of Sir John Eliot, ii, 57, 52, 96, 378, note.

(b) 3 Cha. I, c. 1.

(c) Clode, Mil. Forces, i. 57, 61, and Appendix xlii.

(d) 31 Cha. II, c. 1.

(e) Clode, Mil. Forces, i. 80, 81.

(f) 1 Will. & Mar. sess. 2, c. 2.

(g) 1 Will. & Mar. sess. 2, c. 4.

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**Billeting
under Army
Act.**

120. The power thus conferred was subsequently re-enacted in every Mutiny Act, until it was embodied in Part III of the Army Discipline and Regulation Act, 1879, now replaced by Part III of the Army Act. As the Army Act is only in operation by virtue of an Act passed annually, billeting continues illegal except to the extent expressly allowed by the Army Act, and so long only as that Act is kept in operation (*a*).

**Billeting
illegal
except so
far as
expressly
authorised.**

121. The recital above quoted indicated that billeting was to be only of troops on the march, and the doubt which hence arose as to the power to billet the guards in Westminster led to the insertion in the Mutiny Act of 1707 of a special enactment, authorising them to be so billeted. This enactment was annually re-enacted until 1879 (*b*). In other parts of the country, however, troops were frequently billeted after they had arrived at their destination, under colour of a presumption that they were still on the march, and that the route authorising them to be billeted was still in force.

**Billeting in
private
houses
illegal.**

122. Since the time when billeting was first authorised by the Mutiny Act, no alteration in principle, and but little in detail has been made in the law as regards England. That law has never allowed billeting in private houses, though before the Revolution both Charles II and James II issued orders for such billeting (*c*). In Scotland and Ireland on the other hand, such billeting was allowed until quite recently; indeed, it was only abolished in Ireland in the year 1879.

In Scotland.

123. As regards Scotland, billeting was regulated by a number of Acts passed before the Union with England, which while prohibiting free quartering, contained no definition of the houses liable to billets, so that private houses were not exempt. At the time of the Union, in 1708, the Mutiny Act was extended to Scotland, and a provision was inserted (*d*) allowing officers and soldiers to be quartered in such and the like places and houses as

(*a*) The Acts prohibiting billeting were suspended in express terms by the Mutiny Acts; they are now suspended in general terms by s. 102 of the Army Act.

(*b*) Clode, Mil. Forces, i. 232, 238.

(*c*) Clode, Mil. Forces, i. 57, 61, 81, and App. xii.

(*d*) 7 Ann. c. 4, s. 22, 1708.

they might have been quartered in by the laws in force at the time of the Union. This provision was annually re-enacted until 1857, when the provisions as to billeting in Scotland were assimilated to those in England (a). Ch. IX.

124. As regards Ireland, billeting was regulated by Acts passed before the Union with Great Britain, which allowed billeting in public houses (described in much the same terms as in England), and "where there shall not be found sufficient room in such houses, then in such manner as has heretofore been customary." After the Union the law remained the same, the provisions of the Irish Acts being at first continued by, and afterwards re-enacted in, the Mutiny Act until the year 1879, when the words allowing billeting in private houses were omitted from the Army Discipline and Regulation Act, and billeting was placed on the same footing throughout the United Kingdom (b). In Ireland.

125. Although billeting was oppressive and generally unpopular, as well as detrimental to the soldier (c), yet down to the end of the last century the opponents of a standing army objected to the building of barracks on the ground that it facilitated the maintenance of the army to the danger of the constitution and to the oppression of the people (d), and so long as their objections prevailed, billeting was a necessity. In 1792, however, steps were taken for providing sufficient accommodation for the troops (e), and during the present century barracks have gradually been built, so that billeting is now hardly ever resorted to for the regular forces, except when actually moving, and the introduction of railways has greatly diminished its necessity even on those occasions. Necessity of billeting while barrack accommodation insufficient.

126. A check has always existed on the arbitrary exercise of the power of billeting, the power having been entrusted to civil authorities, namely, the constable in the first instance, or in his default the justices; and these Checks on abuse of practice.

(a) 20 Vict. c. 13.

(b) Mr. W. L. Selfe, of Lincoln's Inn (now Judge Selfe), has furnished details of the several changes in the billeting law, the most important of which, as regards England, will be found in the Mutiny Acts for 1701, 1702, 1707, 1712, 1715, 1757, 1763, 1809, 1826, 1829, 1858. See also *Parker v. Flint*, 12 Mod. Rep., 255 (S. C. sub nomine *Parkhurst v. Foster*), 1 Lord Raymond, 479.

As regards Scotland, billeting was regulated by Acts passed in 1645, 1646, 1647, 1649, 1678, 1689 (Claim of Right), 1693 c. 2, 1698 c. 9, 1718, 1844, and 1857.

As regards Ireland, billeting was regulated by Acts passed in 1707, 1717, 1779, 1782, 1801, 1813, and 1829.

(c) See many details as to the difficulties which arose as to billeting in Clode, Mil. Forces, i. chap. xi.

(d) Clode, Mil. Forces, i. 221, 242.

(e) Under a barrack establishment set up by the military authorities: the duties were, however, in a few years transferred to the Board of Ordnance. Clode, Mil. Forces, i. ch. xii.

Ch. IX. authorities have been held liable to pay damages to persons on whom they billet soldiers improperly (*a*).

Routes
authority
for billeting.

127. Moreover, it has always been assumed that troops can only be moved by authority of a route signed on behalf of the Crown (*b*). These routes have always been signed by some civil officer, and it has been the practice, which has now received statutory authority (*c*), for constables and justices to billet only on the production of such routes. Formerly the routes were signed from time to time, as they were wanted, by the Secretary at War, but in 1857 (soon after the creation of the office of Secretary of State for War) they were signed by the Secretary of State in blank, and issued to the military authorities to be used as required (*d*). The present practice is for the Secretary of State for War to sign in the name of the Queen an order addressed to the officer commanding-in-chief directing him to move the troops as necessary; and directing the civil authorities to assist in providing quarters and impressing carriages. Printed copies of this order, with a lithographed signature of the Secretary of State attached, are then issued, in which the details of the movement of troops are filled in by the military authorities as occasion requires; and they are signed by order of the officer commanding-in-chief, if a general route, by the Quartermaster-General, and if a district route by some officer in the Quartermaster-General's department; or in some cases by the general officer commanding the district.

Billeting
the militia.

128. Ever since 1757 the Militia Acts have authorised the militia when out for training, and when embodied, to be billeted, and this has been done without a route under an order from the lieutenant of the county, and since 1871 from the commanding officer (*e*).

Impressment of Carriages.

Prerogative
right of pur-
veyance.

129. Until the Restoration, carriages and horses could be obtained for the movement of the troops under the Sovereign's prerogative of purveyance. This prerogative was abolished in 1660 (*f*) in consequence of the great oppression caused by it, but in 1662 a power was given tem-

(*a*) This was decided in 1697, in the case of *Parker v. Flint*, 12 Mod. Rep. 255 (S. C. sub nomine *Parkhurst v. Foster*), 1 Lord Raymond, 479.

(*b*) Clode, Mil. Forces, i. 219. It does not quite appear whether the inability to move troops without a route was in consequence of the necessity of obtaining by means of the route carriages and billets, or of the route being a necessary authority for military reasons.

(*c*) Army Act, s. 103.

(*d*) Clode, Mil. Forces, i. 219.

(*e*) Clode, Mil. Forces, i. 42, and the various Militia Acts. The enactment now in force is s. 181 of the Army Act.

(*f*) By 12 Cha. II, c. 24, s. 11.

porarily to impress carriages and horses for the use of the navy and the ordnance (a). Ch. IX.

130. The army in general was omitted, perhaps on purpose, from this Act, but in 1692 a section was added to the Mutiny Act (b) authorising justices when required by an order from the Crown to direct the constables to provide carriages for the use of the army when on the march within the kingdom, and specifying the maximum distance to be travelled, and the price to be paid. This section was intended to provide for the impressment of carriages to convey arms and baggage only (c), and contained restrictions similar to those now in force prohibiting soldiers (other than sick or wounded) from riding in the carriages, and forbidding the impressment of saddle horses. In 1799 a section was added (d) enabling the Crown in case of emergency to require the justices to provide carriages, saddle horses, and vessels for the conveyance of persons as well as baggage. The two sections were annually repeated in the Mutiny Act, with no alteration in principle, and very little in detail, down to the year 1879, when they were embodied in Part III of the Army Discipline and Regulation Act, which has been replaced by the Army Act.

Impressment under the Mutiny Act.

131. Impressment of carriages in Scotland was long regulated by Acts passed before the Union with England, which, after that event, were annually kept in force by a provision in the Mutiny Act till 1857, when the provisions applying to England were extended to Scotland (e). In Ireland also impressment of carriages was regulated until 1813 by Acts passed before the Union, and kept in force after that event by a provision in the Mutiny Act. In that year (f) the provisions of the Irish Acts were transferred into the Mutiny Act, and consolidated as far as possible with the provisions applicable to England, but many differences in detail remained, some of which are still to be found in the schedules to the Army Act (g).

Scotland and Ireland.

(a) 14 Cha. II, c. 20, which recited the repeal of the right of purveyance by 12 Cha. II, c. 24. The Act expired but was revived for seven years by 1 Ja. II, c. 11, was again continued by 4 Will. & Mar. c. 24, and again by 11 Will. III, c. 13, but not subsequently, and was repealed by the Statute Law Revision Act, 1863. The requisition was to be made by warrant from the Lord High Admiral or two Commissioners of the Navy or from the Master or Lieutenant of the Ordnance, directed to two justices of the peace. The maximum distance to be travelled and the rate of remuneration were fixed by the Act.

(b) 4 Will. & Mar. c. 13, s. 27.

(c) See 7 Ann. c. 4, s. 35.

(d) 39 Geo. III, c. 20, s. 46.

(e) 20 Vict. c. 13.

(f) 53 Geo. III, c. 17.

(g) Mr. W. L. Selge has furnished the following references to the principal changes in the law as to impressment of carriages:—

1. As regards England. 7 Ann. c. 4, s. 37; 39 Geo. III, c. 20, s. 46; 39 & 40 Geo. III, c. 27, s. 45; 58 Geo. III, c. 10, s. 73; 10 Geo. IV, c. 6.

2. As regards Scotland. Impressment was regulated before the Union

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—
Orders
authorising
impress-
ment.

132. The power of impressment, like that of billeting, is exercised only by the civil authority, that is to say, the justices and constables. In the case of impressment for ordinary purposes these authorities could at first act only under an order from the Crown, which necessarily was countersigned by the Secretary at War or some Minister; but since 1708 (*a*) orders have been allowed to be signed by the General of the Forces, while they might also be signed by the Master-General or Lieutenant-General of the Ordnance from 1720 (*b*) to 1855, when the Board of Ordnance was abolished; and since 1807 (*c*) they have been allowed to be signed by any person duly authorised in that behalf. In practice, however, the power of impressment has been exercised only in pursuance of a route signed as in the case of a route authorising billeting; and this practice has now received statutory sanction in the Army Act (s. 112). Impressment in case of emergency was authorised by the Mutiny Act only on an order signified by the Secretary at War, or after the transfer of his duties, by the Secretary of State for War, or in Ireland by the Chief Secretary or Under Secretary, or the first clerk in the Military Department, and the law in this respect remains unchanged (*d*), with the exception that such orders can no longer be signified in Ireland by any other official than the Chief or Under Secretary. The Act imposes penalties for disobedience to a requisition, but does not authorise the seizure of the carriages, &c., unless an order for the embodiment of the militia is in force; in which case, the requisition may extend to purchase as well as hire, and a person refusing or neglecting to furnish carriages, &c., as ordered, is liable to have them seized. If, in any other case, they were seized, the owner would have a remedy by action for damages.

Impress-
ment of
carriages for
the militia.

133. The Militia Acts have made provision for the impressment of carriages for the militia since 1757, when embodied, and since 1786, when in training. At present the force when embodied, or out for training, is subject to military law, and therefore with regard to impressment of carriages is in the same position as the regular army (*e*).

Exemptions
from tolls.

134. The subject of exemption from tolls is nearly connected with that of impressment of carriages. The exemption of carriages and vessels employed under requisitions of emergency was introduced in 1799 (*f*), when

by an Act of the Parliament of Scotland, 1693, c. 11. For subsequent changes see 58 Geo. III, c. 11, s. 87; 10 Geo. IV, c. 6; 20 Vict. c. 13.

3. As regards Ireland, see Acts of Parliament of Ireland, 6 Ann. c. 14; 3 Geo. II, c. 10; 15 Geo. II, c. 6; 7 Geo. III, c. 14; 19 & 20 Geo. III, c. 16; 21 & 22 Geo. III, c. 43; and 41 Geo. III (U.K.), c. 11, s. 55; 53 Geo. III, c. 17; 7 Geo. IV, c. 10, s. 83.

(*a*) 7 Ann. c. 4.

(*b*) 6 Geo. I, c. 3.

(*c*) 47 Geo. III, sess. 1, c. 32.

(*d*) Army Act, s. 115.

(*e*) 30 Geo. II, c. 25; 26 Geo. III, c. 107. The enactment now in force is s. 181 of the Army Act.

(*f*) 39 Geo. III, c. 20, s. 46.

impressment under such requisitions was first allowed. **Ch. IX.**
The general exemptions now conferred by s. 143 of the
Army Act were introduced into the Mutiny Act in 1803 (a),
and 1807 (b). The clause as to payment of ferries in
Scotland dates from 1721 (c). Exemptions from turnpike
tolls in England are also conferred by the General Turn-
pike Act of 1822 (d), and by various local Acts. The pro-
visions were extended to the Army Reserve in 1867 (e).

Conveyance of Troops by Railway.

135. Shortly after the introduction of railways, provi- **Conveyance**
sion was made with respect to the conveyance of troops **of troops by**
by railroad. The first provision was made in 1842 (f) and **railway.**
required the directors of a railway company to permit, on
the production of a route signed by the proper authorities,
the conveyance of officers and soldiers of the army,
marines, and militia, with their baggage, stores, arms, and
ammunition, at the usual hours of starting, at such prices,
or on such conditions as might be contracted for between
the Secretary at War and the railway company. This
enactment was strengthened in 1844 (g), when the com-
panies were required to provide conveyance at fares not
exceeding those mentioned in the Act, and a maximum of
fares was also prescribed for the conveyance of public
baggage, stores, ammunition (with an exception for gun-
powder and explosives), and necessaries. These provisions
were extended to the Army Reserve in 1867 (h), and were
re-enacted in 1883 (i) as regards the regular, reserve, and
auxiliary forces as well as for the naval forces. The Act
of 1883 reduces the maximum fares and requires the pro-
vision of such description of carriages as are specified in
the route, but provides that if the company loses the
benefit conferred by the other provisions of the Act with
respect to the exemption from passenger duty, they are
to convey the forces and baggage on the same terms as if
the Act had not passed.

136. In 1871 it was enacted that when Her Majesty by **Power to**
Order in Council declares that an emergency has arisen **take posses-**
in which it is expedient for the public service that the **sion of rail-**
Government should have control over the railroads in the **ways in**
case of
emergency.

(a) 43 Geo. III, c. 20, s. 55.

(b) 47 Geo. III, sess. 1, c. 32, s. 60.

(c) 7 Geo. I, c. 6.

(d) 3 Geo. IV, c. 126, s. 32.

(e) 30 & 31 Vict. c. 110, s. 16; re-enacted 45 & 46 Vict. c. 48, s. 23.

(f) 5 & 6 Vict. c. 55, s. 20.

(g) 7 & 8 Vict. c. 85, s. 12.

(h) 30 & 31 Vict. c. 110, s. 16; re-enacted by 45 & 46 Vict. c. 48, s. 23.

(i) 46 & 47 Vict. c. 34, s. 6 (see p. 790).

Ch. IX. — United Kingdom, or any of them, the Secretary of State may empower any person to take possession of any railroad, and of the plant belonging thereto, and use the same for Her Majesty's service in such manner as the Secretary of State directs. Full compensation is to be paid to the persons whose railroad is taken possession of. The Act extends to tramways (a).

(a) 34 & 35 Vict. c. 86, s. 16.

CHAPTER X.

ENLISTMENT.

1. A summary of the history of enlistment down to the year 1870 has been given in Chapter IX : it is proposed in this chapter to sketch the system in operation under existing Acts, and under the Recruiting Regulations, which give general instructions as to the appointment and duties of recruiting agents, the qualification of recruits, the mode of recruiting, and other matters. Object of chapter.

2. The provisions of the Army Enlistment Act, 1870, are re-enacted with slight modifications in the Army Act, so that the latter only need be noticed. A recruit is not to engage for more than 12 years, and may engage to serve the whole time with the colours, or part of the time with the colours and part in the Army Reserve (*a*). Enlistment for a term less than 12 years would, however, be legal, and any part of such term might be for service in the reserve (*b*). Term of original enlistment.

3. A Secretary of State, however, may allow a soldier, if he wishes, to go into the reserve at once, or to extend his army service (*i.e.*, service with the colours) for any time up to the whole term of his original enlistment, or to extend the term of his original enlistment up to 12 years (*b*). Change of conditions of service

4. The old term of 21 years is still retained ; as, subject to any regulations made by the Secretary of State, a soldier whilst serving with the colours may, after the expiration of 9 years from the date of his original enlistment, with the approval of the competent military authority (*c*), re-engage to serve for such a further period of army service as will make up a total of 21 years' continuous service (*d*). Re-engagement.

5. Subject also to such regulations, a soldier who so Con-
tinuance in

(*a*) Under the Reserve Forces Act, 1882.

(*b*) Army Act, ss. 76-78.

(*c*) This military authority is the Field-Marshal or other officer commanding-in-chief, or the Adjutant-General, or the commanding officer of the soldier, or any officer superior in command to that commanding officer, Army Act, ss. 101 (1), 190 (3) (32), and Rule 127.

(*d*) Army Act, s. 84. As to the conditions under which approval is authorised to be given, see Q. E., Sect. XIX.

(M.L.)

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service after
21 years.

Regulations
of Secretary
of State as
to re-en-
gagement,
&c.

Regulations
as to non-
commis-
sioned
officers.

Power in
certain cir-
cumstances
to detain
soldier after
expiration
of his term.

re-engages may, at the end of the 21 years, with the approval of the competent military authority, continue to serve, with a right to his discharge 3 months after he claims it (a).

6. The present regulations, however, restrict the re-engagement and continuance of service, as private soldiers cannot re-engage before completion of 11 years' service, nor (except those in possession of two good conduct badges) without authority from head-quarters; and are only allowed in special cases, with the approval of the general officer commanding, to continue their service beyond 21 years (b).

7. Under the same regulations, warrant officers at any time and non-commissioned officers on the expiration of a year's probation in a rank not below that of corporal, bombardier, or 2nd corporal, have the right to extend their service to 12 years with the colours; warrant officers and serjeants, after completing 9 years' service, and schoolmasters during the twelfth year of service, have the right to re-engage, subject only to the veto of the Secretary of State. Other non-commissioned officers, bandsmen, artificers, &c., may be allowed to re-engage by their commanding officer. Non-commissioned officers may, with the approval of the commanding officer (who before approving must, with a few exceptions, obtain the consent of some superior authority), continue their service after 21 years, but have not the right to do so (c).

8. A soldier is liable to be detained in service for 12 months beyond the time at which he would otherwise be transferred to the reserve, or discharged, if a state of war exists, or if he is beyond the seas, or if the reserves are called out. A soldier who would otherwise be discharged may also agree with the competent military authority, while a state of war exists, to continue as a soldier during the war, or until the end of 3 months after he claims his discharge (d). The power of the Crown to discharge a soldier is noticed below.

In case of imminent national danger or great emergency, when the reserves can be called out by the Queen's proclamation for permanent service, a like proclamation can require men who would otherwise be transferred to the reserve to continue in army service; these men are then in the same position as if they had been transferred to the reserve and called out on permanent service (e).

(a) Army Act, s. 85.

(b) Q. R., Sect. XIX.

(c) See Army Act, s. 86; Q. R., Sect. XIX, to which reference must be made for details.

(d) Army Act, ss. 87, 88. A soldier enlisted after the commencement of the Army Act, can only be detained after the time at which he would otherwise be transferred to the reserve, if a state of war exists.

(e) Army Act, s. 88. See Reserve Forces Act, 1882, s. 12.

9. The Acts of 1847 and 1867 and 1870 adopted, in reckoning the years of a soldier's service, the principle of omitting those periods during which he had not given the service which he had agreed upon enlistment to give, *e.g.*, by having been in prison, or by reason of desertion, or absence without leave. After 1870, the effect of applying this principle to men liable under their enlistment to enter the reserve, was to protract the time before a soldier's entry into the reserve, but not the term of his liability to service in the reserve. It kept inferior men with the colours, whose places might otherwise be filled by good recruits.

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—
Forfeiture of service under former Acts.

10. The Army Act, therefore, abandons this principle, and does not, because a man is a bad soldier and constantly in prison, require him to serve longer, but allows him to be discharged or sent into the reserve at the usual time. On the other hand, it provides that a soldier guilty of desertion or fraudulent enlistment shall forfeit, not only the time of his absence, but all his service prior to his conviction, and be liable to serve as if he had been attested at the date of his conviction; the term of any imprisonment to which he is sentenced will reckon as part of his service after that date. The Secretary of State, however, has power to restore all or any part of the service forfeited (*a*).

Provisions of Army Act as to forfeiture of service.

11. This forfeiture, coupled with the provision as to the liability of a soldier convicted of the above offences to general service, will enable a man who has committed them to be sent to serve abroad, or in some other sphere where, by reason of greater activity or otherwise, he will be removed from the class of temptation under which he may have committed the offence. For, however serious the above offences are in a military sense, they are often committed, not from any want of moral character or any reluctance to serve, but from some discontent, or from association with bad companions, or from some sudden or special temptation inducing the man to absent himself.

Effect of provisions.

12. A man may, since 1870, under the regulations of the Secretary of State, be engaged for service in any particular corps, but otherwise he is enlisted for general service, and, if enlisted for general service, he is under the present law to be appointed, as soon as practicable, to some corps, but may be transferred, within three months of his attestation, to any other corps of the same arm or branch of the service.

Enlistment for general service and appointment to corps.

13. The power to transfer used formerly to be exercised in such a manner as to make it oppressive and much dreaded by the soldier. The Mutiny Act in 1765 expressly authorised courts-martial to sentence deserters to

Power to transfer under former Acts.

Ch. X. — be transferred for service in foreign parts; but subsequently transfer, except by consent or as a punishment, was abandoned.

Provisions
of Army
Act as to
transfer.

14. At present when once a soldier is appointed to a corps for which he enlisted (or if he enlisted for general service has been appointed for three months to a corps), he may make it his home so long as he serves with the colours, provided he conducts himself fairly well, and is qualified to serve in the place in which his corps is ordered to serve. He may be transferred, however, to another corps with his own consent, or compulsorily. The compulsory transfer may be either—(1) for the purpose of retaining him in a place when his corps removes; or (2) as a punishment.

By consent.

15. It may happen that a man who is appointed to the cavalry may, with advantage, be transferred to the infantry, if he is unable to learn to ride; while a man may be transferred to another corps for the purpose of serving with a brother. These cases would be with his consent.

From regi-
ment
ordered
abroad from
home, or
vice versa.

16. When a soldier has been invalided from abroad, or his battalion is ordered abroad and he is unfit to serve abroad, or will, within two years, go into the reserve or be discharged, he can, if he does not go into the reserve at once, be transferred compulsorily to a corps of the same branch of the service in the United Kingdom or to the reserve. Similarly, when a regiment or battalion abroad is ordered home or to another station, a soldier who has (in addition to his reserve service) two years' army service to run under his original enlistment, may, for the purpose of serving abroad the residue of his army service, be transferred compulsorily to another corps of the same branch.

As a punish-
ment.

17. A soldier who has been guilty of desertion or fraudulent enlistment, or has been sentenced by a court-martial to six months' imprisonment, may have his punishment wholly or partly commuted into a liability to general service, and he may then be transferred from time to time to any corps. This power may well be exercised in cases where a soldier gets into trouble in the United Kingdom, and there is a prospect of his being converted into a good soldier by being sent abroad (*a*). A soldier committed as a deserter by a civil magistrate in any part of Her Majesty's dominions may be transferred compulsorily to a corps near the place where he is committed, or to any other corps if the competent military authority direct, but this power need not often be exercised (*b*).

Conditions
of enlist-
ment not

18. The enlistment of the soldier is a species of contract between the Sovereign and the soldier, and under the

(*a*) See above, para. 11.

(*b*) As to transfer generally, see Army Act, s. 83, Q. R., Sect. XIX; and as to competent military authority, Army Act, s. 101 (1), and Rule 127.

ordinary principles of law cannot be altered without the consent of both parties. The result is that the conditions laid down in the Act under which a man was enlisted, cannot be varied without his consent. A soldier, therefore, who was enlisted under the Act of 1867, or the Act of 1870, will still be under the conditions contained in those Acts under which he enlisted, except so far as he has consented to an alteration of those conditions. A soldier, however, who has enlisted under one Act, and re-engaged under another, has thereby consented to place himself under the Act under which he re-engaged. So also has a soldier, who has given notice to continue his service, though until the passing of the Army Act he had been assumed to remain under the Act to which he was subject at the time when he gave the notice.

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—
varied
without
consent of
soldier.

30 & 31
Vict., c. 34.
33 & 34
Vict., c. 67.

19. The above principle was recognised in 1879, as the Army Discipline and Regulation (Commencement) Act of that year provided that the Army Discipline and Regulation Act, 1879, should not affect the position of a soldier, without his consent, as regards the term of his service, or his liability to forfeit his service or to be transferred to another corps. In order to make clearer the position of soldiers enlisted before the passing of the Act of 1879, the Army Act provided that all the provisions of Part II of that Act, with certain exceptions, should apply to those soldiers. The provisions thus applied were substantially the same as those of the former Acts to which those soldiers were subject, and in the case of differences exceptions are made. Thus, a soldier as regards the reckoning and forfeiture of his service still remains subject to the Act to which he was subject before 1879; but with his consent and the approval of the competent military authority his service may be reckoned from the date of his attestation, without any of the deductions which are required to be made by the Act to which he was subject. So again a soldier who is entitled to be discharged, cannot without his consent be detained either for an additional twelve months because the reserves are called out, nor in any other case, if he could not have been so detained before 1879.

Application
of Army
Act to
soldiers en-
listed under
former Acts.

20. The liability to general service on conviction for desertion or fraudulent enlistment was extended to old soldiers, because it is a mitigation of punishment for crime; but the power to transfer soldiers given by sub-sections (4) and (5) of section 83 did not apply to any soldier who enlisted between the 19th of June, 1867, and the 9th of August, 1870, if he had not re-engaged. A soldier who has re-engaged since the commencement of the Army Discipline

Further
observa-
tions on
application
of Army
Act.

Ch. X. and Regulation Act, 1879, becomes, on the principles before mentioned, subject to the whole of Part II of the Army Act; and a soldier who extends his army service, or who gives notice to continue his service after the commencement of the Army Act, will also be deemed to have consented to the application to him of the whole of Part II of that Act.

Attestation
before civil
authority
required
since 1694.

21. Since 1694 (*a*) a soldier has been required to be attested before some civil authority as a mode of protecting him against being entrapped, without understanding the nature of it, into a contract, which, even though not a contract for life, is one of a very serious nature. Attestation was also adopted as a protection from impressment (*b*). The practice which exists in many parts of the country of concluding a bargain by giving some earnest of it, was adopted in the case of enlistment by the giving of the shilling, and formerly the acceptance of the shilling rendered the man for some purposes a soldier (*c*).

Provisions
of Army
Act as to
attestation.

22. Under the Army Act, the acceptance of the shilling has no such effect. A man offering to enlist receives a notice informing him of the general conditions of service in the army, and of the requirements of attestation, and directing his appearance before a justice. If he fails to appear he has merely broken his bargain; he cannot be arrested as a criminal; and on appearing before the justice he may object to enlist, and if so cannot be required to pay any smart money. If he appears before the justice and takes the oath, he becomes an attested soldier, but he will still be able to procure his discharge within three months by paying a sum which is not to exceed, and is at present fixed at, ten pounds. The attestation consists in appearing before the justice, answering certain questions, which are recorded, and making and signing a declaration as to the truth of those answers, and taking the oath of allegiance (*d*). Thereupon he becomes for all purposes a soldier, and any invalidity in the attestation can only b

(*a*) 5 & 6 Will. & Mar., c. 15, s. 2, quoted in Clode, *Mil. Forces*, ii. p. 7.

(*b*) The Secretary at War used to discharge soldiers improperly enlisted. See Clode, *Mil. Forces*, ii. p. 8. The Queen's Bench discharged soldiers improperly impressed, *R. v. Kessel*, Burrow's Rep. 637. See Clode, *Mil. Forces*, ii. p. 587.

(*c*) The acceptance of the shilling was treated as an agreement by the man to enlist, and either to complete his enlistment by attestation before a justice, or in default, to pay smart money, which latterly amounted to 20s. Enactments were made for giving him notice of what he was about to agree to, and for the lapse of a certain time between his receipt of the shilling and notice, and his final attestation before the justice. On the other hand, if he absconded between his acceptance of the shilling and his appearance before the justice, he was liable to be apprehended as a vagabond, and punished accordingly, and also to be compulsorily attested as a soldier.

(*d*) As to the form of oath and the validity of enlistment without it, see Clode, *Mil. Forces*, ii. 21.

taken advantage of within three months afterwards. Any immaterial error in the attestation paper can be amended at any subsequent time by a justice (a). The disqualification of an officer while subject to military law (except a militia officer when not embodied) to act as a justice for the purpose of attesting recruits for the regular forces, was removed in 1883; and officers are now empowered so to act, if authorised by the regulations of a Secretary of State. The persons who in India, the colonies, and foreign countries have authority to attest recruits, are enumerated in s. 94 of the Army Act.

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23. The present practice is to have the attestation paper signed in duplicate, so that one duplicate may be kept at home and the other follow the man wherever serving. This practice renders less important the provisions of the Army Act (s. 163) for proof of enlistment by a certified copy of the attestation paper, which prevent a prosecution for desertion abroad failing by reason of the attestation paper being at home. The same section makes the attestation paper evidence of the soldier having given the answers set out in it, a provision useful in case of a prosecution for making a false answer; in which case the attestation paper alone, and not a copy, is evidence.

Evidence of attestation.

24. Notwithstanding the provisions for protecting persons from being entrapped into being soldiers, it has always been the law that a man in pay as a soldier is subject to military law, though not attested. This law is still maintained, because if a man chooses to serve and take pay as a soldier, he must be considered to have accepted the conditions under which he is paid and treated as a soldier, and therefore to be subject to military law. Even an alien who enlists by making a false answer, would apparently come under the same rule. The Act, however, provides that a man in such a position may claim his discharge at any time, and the commanding officer is to forward the claim to the competent military authority for submission to the Secretary of State; but the man till discharged has no right to absent himself, and is liable in all respects to be treated as a soldier. This provision as to discharge will not apply to a soldier who has gone through the form of attestation, but whose attestation is illegal, because after three months no advantage can be taken of any invalidity in the attestation (b).

Acceptance of pay renders a soldier subject to military law, though not attested.

25. If an apprentice in the United Kingdom, who was bound when under sixteen by a regular indenture for at least four years, enlists while still under twenty-one, he can be claimed by his master, through a proceeding before

Enlistment of apprentices.

(a) Army Act, ss. 80, 81, 100.

(b) Army Act, s. 100.

- Ch. X.** — justices, but not otherwise. An apprentice who is so claimed is not liable afterwards to serve under his enlistment. With the above exception, and a similar one for indentured labourers in the colonies, a master cannot claim his servant who has enlisted (*a*).
- Of minors.** 26. An enlistment is a valid contract, although entered into by a person under twenty-one, who by the ordinary rules of law, except where modified by statute, cannot contract any engagement (*b*).
- Of aliens.
Act of
Settlement.** 27. Though the Act of Settlement (*c*) which prohibits aliens holding any office, civil or military, does not in terms apply to soldiers, and though there was no statutory prohibition of the enlistment of foreigners, it seems to have been considered that the Crown had no authority either to enlist aliens for service in the United Kingdom, and consequently to punish them for desertion, or to billet them when in this country (*d*).
- Limited
power to
enlist
aliens.** 28. Statutory power was therefore taken in 1757, and again in 1782, to quarter foreign troops in this kingdom (*e*), and in 1794 and in subsequent years statutory power was taken by the Crown to enlist aliens, even though they were to serve abroad (*f*). This was subject to the conditions that they were not to be brought into the United Kingdom, except with a view to operations abroad; that if so brought they were not to go more than five miles from the sea coast, and that there were never to be more than 5,000 men in the kingdom. A similar provision was made in 1800 (*g*), and during the Crimean War in 1854 (*h*), but in the latter case the only restrictions were that the number of men brought into the United Kingdom was not to exceed 10,000, and that they were not to be billeted. The illegality of the enlistment of aliens has also been recognised in other Acts (*i*), till at last, in 1837, it was enacted that, with Her Majesty's permission (given in each case), an alien may be enlisted, but the number of aliens in any corps must not exceed the proportion of one

(*a*) Army Act, ss. 96, 97.

(*b*) See cases cited in Clode, *Mil. Forces*, ii. p. 34, *R. v. Rotherfield Greys*, 1 B. & C. 345. See also *R. v. Hardwick*, 5 B. & Ald. 176.

(*c*) 12 & 13 Will. III, c. 2, s. 3. An officer does, but a private does not hold an office.

(*d*) Clode, *Mil. Forces*, i. pp. 89, 90, 487; ii. pp. 35, 431-5. Foreign troops seem to have been received in or brought into the kingdom in the time of Anne and Geo. I. Report on recruiting, 1867, *Parl. P.*, 215.

(*e*) See 30 Geo. II, c. 2; 22 Geo. III, c. 26.

(*f*) See 34 Geo. III, c. 43. The Act 29 Geo. II, c. 5, recited the enlistment of foreigners in America, and gave power to commission them, but not to enlist. This was given by the amending Act, 38 Geo. III, c. 13.

(*g*) 39 & 40 Geo. III, c. 100.

(*h*) 18 & 19 Vict. c. 2.

(*i*) See 44 Geo. III, c. 75; and 46 Geo. III, c. 23, continued by 55 Geo. III, c. 85. See also the provisions on the amalgamation of the Indian Army, 24 and 25 Vict. c. 74, s. 2.

to every fifty natural-born subjects, and this provision has been re-enacted in the Army Act (*a*). An alien so enlisted is by the Army Act made incapable of becoming an officer. A relaxation in favour of negroes and persons of colour was originally made in consequence of negroes captured in slavers being taken into Her Majesty's service, and has been continued to legalise the recruiting of natives on the West Coast of Africa for service in the West India regiments and of Lascars in the East (*b*). It must also be recollected that under the Naturalization Act, 1870, a naturalized alien has the same privileges as a British subject, and therefore is capable of being enlisted to serve Her Majesty.

Ch. X.

33 & 34
Vict., c. 14.

29. The terms of the enlistment of a soldier, since he has been enlisted directly by the Crown, have always been to serve the Sovereign so long as his services are required, within the period for which he agrees to serve; consequently the Sovereign has always had power to discharge soldiers. But a soldier cannot be discharged except by order of the Sovereign or by statutory power, such as the sentence of a court-martial, to which is added in the Army Act, an "order of the competent military authority" (*c*).

Discharge.
Power of
Crown to
discharge
soldiers.

30. A soldier on his discharge is entitled to receive a certificate of discharge, so as to show that he is properly discharged and is not a deserter. In addition to the certificate of discharge, he also receives a certificate of character, showing his conduct, character, and cause of discharge. Until he is duly discharged he remains subject to military law. Discharge has been at different times regarded as a reward or as a punishment (*d*). When the service was for life, discharge was in many cases the highest object of a soldier's desires, and even now in a time of scarcity of labour and consequent high wages it may be a material advantage to him. There is no reference in the present law to discharge as a reward. On the other hand, discharge with ignominy, or discharge towards the end of a man's service shortly before he becomes entitled to receive pension, cannot but have the effect of a punishment.

Certificate
of dis-
charge.

31. A soldier enlisted in the United Kingdom is entitled if, on the completion of his service, he is abroad, to

Conveyance
home of
soldiers on
discharge.

(*a*) 7 Will. IV and 1 Vict. c. 29; Army Act, s. 95 (1).

(*b*) Army Act, s. 95.

(*c*) Army Act, s. 92. The competent military authority is the Officer commanding-in-chief, the Adjutant-General, the Commander-in-Chief in India, and, in any place out of India and out of the United Kingdom, the general or other officer commanding the forces in such place. The expression also includes any other officer prescribed by H.M.'s regulations. Rule 127. For regulations as to discharge, see Q. R., Sect. XIX.

(*d*) See Clode, Mil. Forces, ii. pp. 43-47.

Ch. X. — be sent to the United Kingdom, free of expense, for his discharge ; and a soldier enlisted in the United Kingdom, and discharged there, is entitled to be sent free of expense from the place where he is discharged to the place where he was attested, or to his residence, if his conveyance there costs no more (a). A soldier, under other circumstances, has no statutory right to be sent free of expense to any place on discharge, though, in some cases, he may be allowed a free conveyance as a matter of favour.

Disposal of
lunatic
soldiers.

32. If a soldier is a lunatic, a Secretary of State may send him on his discharge, and also his wife and child, to the workhouse of the parish or union to which he is chargeable, and if he is a dangerous lunatic may send him to the lunatic asylum for lunatics chargeable to that parish or union (b).

Transfer to
reserve.

33. The only power, except with the soldier's consent, of sending him into the reserve before the stipulated time is on occasion of his being unfit to serve abroad, or of his regiment being ordered abroad shortly before the expiration of the time of his service with the colours ; and this power applies only to soldiers enlisted since July, 1879 (c). A soldier who is transferred to the Army Reserve is entitled, on transfer, to free conveyance to his place of attestation or selected place of residence (if not involving greater cost) in the United Kingdom, but has no claim to free conveyance to any place on final discharge from the army after completing his service in the reserve (d).

Offences in
relation to
enlistment.

34. Offences in relation to enlistment, when committed by persons subject to military law, are punishable by military law under ss. 13, 32-34 of the Army Act. A man renders himself liable to imprisonment who, after being discharged with ignominy, or as incorrigible and worthless, or for misconduct, or on account of conviction for felony or a sentence of penal servitude, or dismissed with disgrace from the Navy, enlists without disclosing the circumstances of his discharge or dismissal.

A recruiter who enlists any man whom he has reason to believe to have been so discharged or dismissed, also renders himself liable to imprisonment.

The making of a false answer to any question on attestation is punishable with imprisonment, both by court-martial and also by a civil court of summary jurisdiction for the place where the offence was committed, or where

(a) Army Act, s. 90. The old provisions enabling discharged soldiers and the wives and children of soldiers ordered abroad to obtain from a justice of the peace or mayor a certificate entitling them to beg their way home have been repealed.

(b) Army Act, s. 91.

(c) Army Act, s. 89.

(d) Army Act, s. 90.

the offender may happen to be (a). No one may enlist soldiers unless duly authorised, and any person who does so is liable to a fine not exceeding twenty pounds (b). Ch. X.
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A man who, while belonging to one corps, enlists in another, is guilty of fraudulent enlistment, and can be punished for it; but as he has made two engagements, he can be held to either engagement, and is thus liable to serve, as the military authorities direct, in accordance with the terms of his original attestation, or those of his new attestation, and in either of the corps to which he has been appointed to serve.

(a) Army Act, ss. 33, 99.

(b) Army Act, s. 98. Under the Mutiny Act authority was in terms granted to consuls and other persons abroad to enlist soldiers; but the present Act makes it clear that those officers have only power, like the justices at home, to attest, and have no power to act otherwise in recruiting unless specially authorised to do so. See s. 94.

CHAPTER XI.

CONSTITUTION OF THE MILITARY FORCES OF THE CROWN.

Introductory.

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1. The military forces of the Crown are divided by the Army Act into the Regular forces and the Auxiliary forces.

The Regular forces may be divided into—

- (1.) British forces ;
- (2.) Indian forces ; and
- (3.) Colonial forces.

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2. The Indian forces consist of regiments permanently stationed in India, and formed almost entirely from natives of India. The officers and men of these forces, who are natives of India, are subject to the Indian Articles of War, and are only to a limited extent subject to the Army Act (a). Besides the natives of India, there are Europeans serving as officers, and persons of certain degrees of European descent serving as non-commissioned officers, hospital apprentices, or otherwise, who, though forming part of the Indian forces, are subject to British and not to Indian military law. The enlistment of Europeans for these forces, except for medical or other special service, is prohibited (b). Officers of the British forces are, if qualified according to the regulations for the time being in force, eligible for commissions in the Indian Staff Corps. Officers so commissioned leave their regiments, and are employed, according as the Government of India may direct, in any military or civil employment, irrespective of their ranks in the staff corps. Such officers, while holding civil employments, cannot assume a military command, but continue to receive promotion in military rank in the ordinary course ; and on accepting any military appointment they are entitled to take military command (c).

(a) Army Act, s. 180. The Indian Articles of War (Act No. 5 of 1869) provide that the military law enacted by those articles shall not apply "to any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British forces." The expression "Natives of India," for the purposes of the Army Act and of this chapter, means all persons belonging to Her Majesty's Indian army who are triable by Indian and not by English military law.

(b) 23 & 24 Vict. c. 100 ; Army Act, s. 180 (2) and note.

(c) Royal Warrant of 16 January, 1868, as amended.

3. The Colonial forces are of two classes, namely, the forces raised by the government of a colony, and the forces raised in a colony by direct order of Her Majesty to serve as auxiliary to, and in fact to form part for the time of, the regular forces. The first class of Colonial forces—those raised by the government of a colony—are only subject to the Army Act when serving with part of Her Majesty's regular forces, and then only so far as the colonial law has not provided for their government and discipline, and subject to the exceptions specified in general orders. The Army Act, however (s. 177), provides that the colonial law may extend to the forces, although beyond the limits of the colony where they are raised.

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Observations on Colonial forces.

The second class of Colonial forces—of which the West India regiment, the Royal Malta Artillery, the Hong Kong regiment, and the local companies of Royal Artillery and Engineers in Hong Kong, Ceylon, and elsewhere, are examples—is referred to by ss. 175 (4) and 176 (3) of the Army Act. Their pay and maintenance are voted annually by the Imperial Parliament, and they are in fact Imperial forces although serving in a colony. The Malta Fencibles (now the Royal Malta Artillery) are declared by the Army Act to be part of the regular forces, while the others purport to be included in the regular forces by the Royal Warrant defining "Corps"; but see s. 176 and note. The local companies of Royal Artillery and Engineers in Hong Kong, &c., the Hong Kong regiment, and the West India regiment (but not the Royal Malta Artillery) are in fact enlisted to serve in any part of the world.

British Forces.

4. The British forces require a longer notice. They consist—

British forces.

- (1) of the Army commonly so-called, including the Reserves;
- (2) of the Marines.

5. The Army commonly so-called consists, as regards its combatant portion—

Constitution of "Army" in common acceptance of term.

- (1) of four corps of cavalry, divided into regiments;
- (2) of the Royal Regiment of Artillery, divided into Horse artillery, Field artillery, Mountain artillery, and Garrison artillery, composed of three large divisions, designated respectively the Eastern, the Southern, and the Western (a);

(a) The Militia Artillery belonging to the counties from which the recruits for each of these divisions are drawn is affiliated to its own division. The Volunteer Artillery in like manner form part of the Garrison Artillery Divisions of the districts in which they are located.

Ch. XI.

- (3) of the corps of Royal Engineers, divided into troops and companies (a);
- (4) of the Army Service Corps, which is sub-divided into the Transport, Supply, Barrack, and Staff Clerk sections;
- (5) besides the colonial forces above mentioned, of 148 battalions of infantry, of which seven form three regiments of foot-guards, while the remaining 141 are distributed into 69 territorial regiments. Each territorial regiment, with one or two exceptions, includes two of the above line battalions, one or more battalions of Militia, and the infantry Volunteer battalions located in the territorial district (b).

Depart-
mental
corps.

6. Beside the combatant portion of the Army, there are departmental corps (c), namely, the Ordnance Store Corps, Medical Staff Corps (including Militia Medical Staff Corps and Volunteer Medical Staff Corps), Corps of School of Musketry, Corps of Armourers, Corps of Army School-masters, Army Pay Corps, Corps of Military Mounted Police, Corps of Military Foot Police, and Post Office Corps. The duties of these corps are sufficiently indicated by their names. Each of them is a corps for the purposes of the Army Act, though the appointment, enlistment, and transfer of officers and men is not regulated quite in the same way as in the case of the territorial regiments; and in connection with some of the above corps civilians are employed who are not subject to military law.

Other de-
partments
connected
with the
Army.

7. Further, it is necessary to mention various departments connected with the army, which are not corps within the meaning of the Army Act. These are the Army Pay Department, Chaplains' Department, Medical Staff, Ordnance Store Department, and Veterinary Department. They are not technically corps within the meaning of the Army Act, inasmuch as they are not declared to be so by Royal Warrant. If, however, any soldiers subject to military law were added to the above departments, they would be a "portion of Her Majesty's regular forces employed on some service," and therefore be a corps within the meaning of the Army Act (d).

(a) The Militia Engineers and the Volunteer Engineers also form part of the corps of Royal Engineers.

(b) Two regiments—the King's Royal Rifle Corps and the Prince Consort's Own Rifle Brigade—contain four battalions of regulars; and one regiment, the Queen's Own Cameron Highlanders, contains one battalion only of regulars. Each of the above regiments, and also the Royal Artillery, Royal Engineers, and Army Service Corps, is a separate corps for the purposes of enlistment and other purposes of the Army Act.

(c) Royal Warrants, 29 September, 1881; 16 May, 1891; 19 July, 1893; 17 November, 1893. As to precedence, Q.R., Sect. I.

(d) Army Act, s. 190 (15 (a) (iv.).

8. For the purposes of enlistment and service, the unit in the army (in the Army Act referred to by the common name of "corps"), is one of the above regiments or corps. A soldier, on his enlistment, is appointed to a corps, and is bound to serve in any part of it; and may belong for the whole of his military life to the corps to which he is first appointed. The officers are also appointed to these corps, but are all alike officers of Her Majesty's land forces, and have army rank as such, which may or may not be the same as their regimental rank; that is to say, the rank in the above unit. They are consequently legally liable to serve with any portion of the army, if so ordered, and not merely with the unit to which they may be appointed; though in practice they are not required to do so. An officer has no right to resign his commission at all times and under any circumstances whenever he pleases. This was decided long ago in the case of officers serving the East India Company, and recently in the case of a naval officer who, having been refused leave to resign, sent in his resignation, and quitted the service while abroad in order to take up a civil appointment at home (a).

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Unit of army for enlistment and service is the corps.

9. The unit for purposes of discipline and some purposes of administration is not necessarily the same as the above unit. In the case of infantry, for instance, the unit for purposes of discipline is *prima facie* one battalion. If, however, part of the battalion is serving detached from the rest, that part becomes the unit for purposes of discipline, while for many purposes of administration it remains part of the battalion; at the same time all men in a battalion are liable to be ordered to serve in any other part of the corps, whereas they cannot be transferred to any other corps without their consent or except as a punishment for certain offences (b).

Unit for other purposes not necessarily the same.

10. Throughout the Army Act the "commanding officer" is referred to for many purposes, and particularly for the purposes of investigating charges and awarding summary and minor punishments. The Act does not define the term "commanding officer." The Rules of Procedure contain a definition, for the purposes of all the rules and also for the purpose of the sections of the Act relating to "Courts-martial," to the "Execution of sentences," and to the "Power of Commanding Officer" (c). In cases to which this definition does not apply, it must depend on the custom

Explanation of term "commanding officer."

(a) *Parker v. Lord Clive*, Burr. 2419; *Vertue v. Lord Clive*, 4 Burr. 2172; and *R. v. Cuning*, E. p. Hall, L. R. 19, Q. B. D. 13. See also the *dictum* of Cockburn, C. J., in *Ex parte Trenchard*, L. R. 9, Q. B. 406. Clode, Mil. Forces, ii. p. 96. Command formerly depended on the commission, but is now the subject of regulation, Army Act, s. 71.

(b) See ch. x. paras. 14-17.

(c) See Rule 12s.

Ch. XI. of the service and the Queen's Regulations, as to who is, under any given circumstances, the commanding officer for a particular purpose.

Reserves—
(1.) Army Reserve.
(2.) Militia Reserve.

11. The Reserves have been treated above as part of what is commonly called the army, although they are really only part of the army when called out for active service. The Reserves consist of the Army Reserve and the Militia Reserve.

Army Reserve divided into two classes.

12. The Army Reserve contains two classes, each of which consists of such numbers as may be from time to time provided by Parliament; the first class is liable to service either at home or abroad; the second class is liable only to serve in the United Kingdom.

First class of Army Reserve.

13. The first class consists of four sections, A, B, C, and D; section D, or supplemental reserve, cannot be called out for permanent service until the whole of sections A, B, and C have been called out (*a*).

Section A of first class.

14. Section A consists of soldiers who at the time of enlistment are under thirty-four years of age, and have been discharged from the army (otherwise than for misconduct) after not less than three years' service, whether they have completed their first term of enlistment or not. The term of service in this section is five years.

Section A has been closed for enlistment since 1879, that is to say, men who have been discharged from the army from any cause whatever, are not at present taken into that section, and consequently there are no men now belonging to it.

Section B of first class.

15. Section B consists of soldiers who are transferred, under the terms of their enlistment for short service; that is, of their enlistment on condition that the latter portion of their term of twelve years' enlistment is to be served in the Army Reserve, while the earlier portion is spent with the colours in army service, such earlier portion being usually seven years, or if that period expires while they are serving abroad, eight years (*b*).

Section C of first class.

16. Section C consists of soldiers who convert army service into reserve service. Thus it includes soldiers whose conditions of service have been varied by the Secretary of State (*c*) so as to allow them, instead of serving with the colours during their whole period of army service, to enter the reserve at once for the residue of the term of their original enlistment. They are transferred to the reserve, but on the expiration of the time which they had engaged to spend with the colours, are placed in Section B.

(*a*) 45 & 46 Vict. c. 48, s. 3. Army Reserve Regulations, Royal Warrant, January 1893.

(*b*) Up to 1881, the time with the colours was usually six years.

(*c*) Army Enlistment Act, 1870, ss. 4, 18; Army Act, s. 73 (2).

17. A soldier who enters Section B or Section C receives a parchment (Reserve) certificate. His discharge documents are made out on his entering the reserve, but remain in the custody of the officer charged with the payment of the Army Reserve, until he finally quits the reserve, when his parchment certificate of discharge is handed to him completed and corrected to date.

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Entry into Sections B and C.

18. Some examples will make clearer the above explanation of sections B and C of Army Reserve. W and X both enlist in the infantry for twelve years, of which seven years are to be in army service, and five years in reserve service. W serves with the colours seven years, and then passes into Section B of the first class Army Reserve, and, after five years in it, is discharged. X, after serving three years with the colours, converts, with the sanction of the Secretary of State, the rest of his army service into reserve service, and passes into Section C of the first class Army Reserve. After remaining in that section for four years, when the period of his army service would otherwise have expired, he passes into Section B, and after five years in it is discharged.

Illustrations of Sections B and C.

Take another case. Y enlists for twelve years' army service, and after serving some of those years (say three, or ten), with the colours, converts, with the sanction of the Secretary of State, the rest of his service into reserve service; he thereupon passes into Section C of the first class Army Reserve, remains in it until the expiration of the twelve years of his enlistment, and is then discharged.

19. Section D or the supplemental reserve consists of men who, on their completion of their first period of engagement (when completed wholly with the colours, or partly with the colours and partly in the Reserve) are enlisted to serve for a further period of four years in this supplemental reserve. Men who on discharge after completing their first period of engagement received bad characters are not allowed to join this section of the Reserve.

Section D or supplemental reserve.

A man can be enlisted if he is in Section B of the Reserve, within six months, and if he is with the colours, within the fortnight before his discharge, but in either case his service in Section D does not commence until his discharge. He is not allowed to re-engage. A note of his enlistment is entered on his parchment discharge certificate, and on his discharge from Section D he receives a parchment certificate of discharge, which makes no allusion to his previous army service.

20. The second class of the Army Reserve consisted,

Second class of Army Reserve.

(M.L.)

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Ch. XI. besides men enrolled under former Acts, of men enlisted from among—

(a.) Chelsea out-pensioners or Greenwich out-pensioners being ex-marines, and

(b.) Men who have served full time in the army,

or of re-engaged men (a). Both these divisions of the second class are practically extinct.

Transfer or enlistment.

21. Men who enter the Reserve, if they enter under the terms of their original enlistment, or on a variation of those terms, are transferred; and if otherwise, are either enlisted or re-engaged, and may be enlisted or re-engaged for such term and in such manner as is fixed by regulations (b).

Annual training of Army Reserve men.

22. The Army Reserve men are liable to be called out annually for training, for a time not exceeding twelve days or twenty drills, and may then be attached to a body of the regular or auxiliary forces (c).

Calling out in aid of civil power.

23. They are also liable to be called out by a Secretary of State, or by the Lord Lieutenant in Ireland, to aid the civil power in the preservation of the public peace. The men residing in any town or district are liable to be called out for the same purpose by the officer commanding the town or district on the requisition of a justice (d).

Liability to permanent service.

24. Further, they are liable to be called out "for permanent service," "by proclamation of Her Majesty in Council in case of imminent national danger or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the Proclamation if Parliament be not then sitting" (e).

One proclamation issued under s. 12 of the Reserve Forces Act, 1882, may order the army and militia reserve, or either of them, to be called out, and may charge a Secretary of State with the duty of giving the necessary directions. These directions may extend to one force or both forces, and by them the Secretary of State can from

(a) Reserve Forces Act, 1882, s. 3. The "enrolled pensioners" are discontinued.

(b) Reserve Forces Act, 1882, s. 4.

(c) Reserve Forces Act, 1882, s. 11.

(d) Reserve Forces Act, 1882, s. 5.

(e) Reserve Forces Act, 1882, s. 12. Army Act, s. 83 (2). These words were substituted, in 1870, for "in case of actual invasion or imminent danger thereof, or in case a state of war exists between Her Majesty and any foreign Power," and in consequence of the expiration of the five years for which men enrolled before the 9th of August, 1870, were enrolled, the words in the text now apply to all men in the Army Reserve. See Army Reserve Act, 1867, s. 10; Army Enlistment Act, 1870, ss. 5, 14,

time to time call out according as may be necessary either some or all of the men of either force; but before any men of the Supplemental Reserve (*i.e.*, Section D) can be called out, all the men in Sections A, B, and C, of the first class of the Army Reserve, must have been called out. Ch. XI.

When either the Army or Militia Reserve is called out, Parliament is to be summoned by proclamation to meet within ten days, if it would not otherwise meet sooner (*a*).

25. Every man, when called out, is liable to serve until Her Majesty no longer requires his services; but not beyond his unexpired term of service in the Reserve, with the addition of twelve months more if a state of war exists, or if he is on service beyond the seas, or if the men in the reserves are at the time called out, that is, if there is imminent national danger or great emergency. An Army Reserve man, when called out, forms part of the Regular Forces, and may be appointed to any corps as a soldier, and transferred within three months afterwards to any other corps; but he can only, unless he consents, be appointed or transferred to the arm or branch of the service in which he previously served (*b*). Extent of liability.

Under the regulations of the Secretary of State, a reserve man is not allowed to proceed to the colonies or to a foreign country as a settler, and is not allowed to quit the United Kingdom or proceed to sea without leave from his commanding officer. He is also duly to report himself, and if called on, to present himself for medical examination (*c*).

26. Under the regulations of the Secretary of State an Army Reserve man can voluntarily re-enter on service with the colours for any time not exceeding twelve years from the date of his original enlistment (*d*). Re-entry on Army Service.

27. The Militia Reserve consists of such number of men as may be provided by Parliament; and they may be enlisted from the Militia of any part of the United Kingdom either for six years or for the residue of their militia engagement (*e*). Under the present regulations of the Secretary of State a man may be enlisted for the Militia Reserve for the unexpired period of his existing Militia engagement, if not less than twelve months (*f*), and some Militia Reserve.

(*a*) Reserve Forces Act, 1882, s. 13.

(*b*) Reserve Forces Act, 1882, s. 14. But a man in the second class cannot be sent abroad.

(*c*) Army Reserve Regulations.

(*d*) Army Act, s. 78 (3). Under existing regulations, a man cannot re-enter on army service unless specially permitted to do so. In 1835 and 1886, circulars were issued facilitating the re-entry on army service.

(*e*) Reserve Forces Act, 1882, ss. 8, 9.

(*f*) Militia Regulations.

(M.L.)

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Annual
training of
men in
Militia
Reserve.

Liability to
permanent
service.

Other pro-
visions as
to Militia
Reserve
men.

General
orders and
regulations
for reserve
forces and
general
result.

form a reserve for the Medical Staff Corps. A man in the Militia and the Militia Reserve may, if not too old at the end of the last annual training during his current engagement, be re-engaged for both forces for the rest of his current engagement and four years in addition (a).

28. A man in the Militia Reserve is liable to be called out annually for training for such time as the Secretary of State directs, not exceeding 56 days, and may be so trained with either the regular or auxiliary forces; but this annual training is in substitution for the annual training to which he is liable as a militiaman (b).

29. The Militia Reserve can be called out on permanent service by the Queen's proclamation mentioned above (c). A man in the Militia Reserve when called out becomes for all purposes a soldier in the regular forces, and can be appointed to any corps, and transferred within three months afterwards to any other corps. He is required to serve so long as the Queen requires his services, but not beyond the unexpired term of his service in the Militia Reserve, with the addition of twelve months longer if a state of war exists, or he is beyond the seas, or if the reserves are called out, *i.e.*, if there is imminent national danger or great emergency (d).

30. A man in the Militia Reserve remains for all purposes a militiaman until called out for permanent service. When so called out, his place in the militia is deemed vacant, and is to be filled up. When released from permanent service, he is to return to the militia, and until he can resume his former position, is to be a supernumerary, but is to have rank, pay, and allowances not lower than when he entered on permanent service (e). The Secretary of State may discharge a Militia Reserve man from the reserve, and thereupon he becomes a militiaman only (f).

31. The Queen by order under the hand of a Secretary of State, can make orders for the government, discipline, and pay of the Army and Militia Reserve, and other matters relating to them; and subject to any such orders the Secretary of State can make regulations for the like purpose (g).

The result is that men in the Army Reserve do not practically form a portion of Her Majesty's regular forces, except when called out for permanent service; and that

(a) Reserve Forces Act, 1882, s. 9; Militia Regulations.

(b) Reserve Forces Act, 1882, s. 11.

(c) Para. 24.

(d) Reserve Forces Act, 1882, s. 14.

(e) Reserve Forces Act, 1882, s. 10.

(f) Reserve Forces Act, 1882, s. 10.

(g) Reserve Forces Act, 1882, s. 20.

men in the Militia Reserve, when not called out for permanent service, are in fact militiamen and members of the auxiliary forces, and not of the regular forces. Ch. XI.

32. On several occasions regiments appear to have been raised for service at sea, but it was also formerly the practice for regiments of the land forces to be sent to serve on shipboard; and even as late as the present century certain regiments were more usually sent on this service than others. Marines.

33. The regiment now known as the Royal Marines was first raised in the year 1755, and consists of two divisions, the infantry and artillery. The artillery rank after the Royal Artillery; the infantry rank next to the Princess Charlotte of Wales' Berkshire regiment (*a*). The men are liable to serve on board Her Majesty's ships, and when borne on the books of any of Her Majesty's ships for such service are subject to the Naval Discipline Act, as if they were seamen of the Royal Navy. When not borne on the books of any of Her Majesty's ships they were subject to a Mutiny Act, passed annually like the Mutiny Act for the rest of the army, but this Act has been discontinued, and they are now subject to the Army Act (*b*). Regiment of Royal Marines raised in 1755.

34. The men are enlisted according to the procedure in Part II of the Army Act, except that the duration of their service is fixed, by Acts applying only to them, at a term of twelve years, with a power to re-engage for a further period of nine years, making up twenty-one years in the whole (*c*). The service of a marine on a foreign station may be prolonged for two years; and a marine who desires to continue in the service after twenty-one years may give notice of his desire, and, with the approval of his commanding officer, may continue in the service, with a right to be discharged after the expiration of three months' notice. A marine, on the completion of his term of service abroad, is, like a soldier, entitled on his discharge to be sent home to England. A marine is not allowed to reckon towards completion of his engagement the time during which he is absent from his duty by reason of imprisonment, or desertion, or other specified circumstances (*d*). Term of service, &c.

35. The Secretary of State and the Admiralty can make regulations providing for the transfer with his consent of a man of the Royal Marines to another part of Transfer of Marines to army.

(*a*) Clode, Mil. Forces, i. ch. iv., ch. xiii. As to precedence, Q.R., Sect. I.

(*b*) Army Act, s. 179.

(*c*) 10 & 11 Vict. c. 63; 20 Vict. c. 1.

(*d*) 10 & 11 Vict. c. 63, s. 8.

Ch. XI. the regular forces, and of a soldier of any part of the regular forces to the Marines, and a man so transferred is to become a Royal Marine or a soldier of the other part of the regular forces as nearly as possible as if he had been enlisted for the force to which he is transferred (*a*).

Expenses of Marines. **36.** The expenses of the marine force are included in the votes for the Admiralty, and the force is under the control of the Admiralty, and not of the Secretary of State for War, or of the officer commanding-in-chief the army; and the Admiralty exercise, in respect of the Marines, many functions that are exercised, in the case of the land forces, directly by Her Majesty (*b*).

Auxiliary Forces (c).

Connection between auxiliary and regular forces. **37.** The auxiliary forces are connected with the regular forces by the inclusion of the militia and the volunteers of the different localities, in the territorial regiments before mentioned. Certain battalions of those regiments are militia battalions, and others are styled volunteer battalions.

Association of militia in corps with regulars. **38.** Every militiaman enlists in the militia for some county, but the Queen has power by order under the hand of a Secretary of State to form the militia into regiments and battalions, and to form such regiments and battalions into corps (*d*), and under this power the infantry militia are included in the territorial regiments. In like manner the militia artillery forms part of the Royal Artillery, and the militia engineers form part of the Royal Engineers. There are no militia cavalry. Two divisions of Militia Medical Staff Corps have been recently formed.

General and local militia. **39.** The two descriptions of militia, the general (or regular) militia and the local militia, and also the general character of the enactments respecting the local militia, and respecting the regular militia so far as raised by ballot, have been stated elsewhere (*e*), and as the local militia and the ballot for the regular militia are at present in abeyance, further details on that part of the subject will not be added here. Almost the only difference between the balloted force of the regular militia, and the enlisted force as it at present exists, consists in the mode in which they

(a) Army Act, s. 179 (12), as amended by s. 7 of Annual Act, 1884, and s. 7 of Annual Act, 1886.

(b) Army Act, s. 179 (4) (6)-(11).

(c) This term has been discontinued in official documents. A.O. 190 of 1891.

(d) Militia Act, 1882, ss. 4, 8.

(e) See Ch. ix.

are raised; and all the provisions of the Militia Act, 1882 (a), except the five sections of Part II, apply to the regular militia, however raised. Ch. XI.

40. The Militia Act, 1882, requires the Crown to appoint Lieutenants for the different counties in the kingdom, those Lieutenants may appoint vice-lieutenants, and must appoint at least twenty deputy-lieutenants. The persons appointed are to be approved and may be displaced by the Crown, and must hold certain property qualifications (b). Provisions of Militia Act, 1882. Lieutenants of counties and deputy-lieutenants.

41. The Queen by order under the hand of a Secretary of State can make orders as to government, discipline, and pay, and all other matters respecting the militia, and, so far as the orders do not extend, the Secretary of State can make regulations for the same purpose either generally or in any special case. The above are in this chapter referred to as the "orders and regulations." Government of militia.

42. The Act authorises the Crown to raise and keep up the militia. As before stated, the numbers are to be annually fixed by Parliament; and as the present force is raised by voluntary enlistment, and the ballot is in abeyance, quotas are not required (c). The men are to be enlisted by such persons as the orders and regulations direct (d), and are at present enlisted by the same recruiting officers as the men of the regular forces. The enlistment and attestation of a militiaman is effected in much the same manner as the enlistment of a regular soldier (e). The enlistment may be for such period not exceeding 6 years, as the orders and regulations fix, and within 12 months of the end of his current period of service, a man may be re-engaged for such further period not exceeding 6 years, as may be so fixed. At present the first period is fixed at 6 years, and the second at 4 years from the expiration of the current engagement; but a man may, if not more than 45 years of age, re-engage at the end of the last training during his current engagement (f). Men who have been discharged from the militia after completing one period of engagement, and also discharged soldiers of good or fair character and of not less than 3 years' service, may re-enlist in the militia for a term of 4 years within 3 years of the date of discharge from the militia or army, provided they are not more than 45 years of age. Number and voluntary enlistment of men.

43. Besides the formation of the militia into regiments Officers and staff.

(a) 45 & 46 Vict. c. 40, repealing the Militia (Voluntary Enlistment) Act, 1875, 38 & 39 Vict. c. 60.

(b) Militia Act, 1882, ss. 29-36.

(c) Militia Act, 1882, ss. 3, 37. See Ch. ix. para. 77.

(d) Militia Act, 1882, s. 7.

(e) Militia Act, 1882, ss. 9, 10.

(f) Militia Act, 1882, s. 8.

Ch. XI. and corps before mentioned, the orders and regulations can regulate the appointment, rank, duties, and number of the officers and the staff of each regiment; but the lieutenants of counties have the right of nominating to first commissions within 30 days after each vacancy (*a*). The officers are always subject to military law (*b*).

Command. 44. The command to be exercised by officers or non-commissioned officers of regulars over the militia, or by militia officers or non-commissioned officers over other portions of the regular forces, depends on regulations made by the Queen (*c*).

Permanent staff of militia. 45. Besides the non-commissioned officers and men of the militia who are merely called out occasionally for annual training, there are certain non-commissioned officers and men in continuous service who form, with the adjutant and other officers, the permanent staff of the militia, and train the recruits, and carry on the administration of the battalions. Most of them are soldiers of the regular forces posted to the militia battalions in pursuance of the orders and regulations; others have been enlisted for the purpose of serving on the permanent staff, and they all are subject to the Army Act, and not to the Militia Acts (*d*).

Training of recruits. 46. Recruits when enlisted have to undergo a preliminary training for the period fixed by the orders and regulations, not exceeding six months, and the orders and regulations may provide for any officer or man being called up with his own consent for purposes of instruction (*e*).

Annual training and exercise. 47. The force must be trained and exercised for not less than 21 nor more than 28 days in every year at such times and places in the United Kingdom as the orders and regulations fix; and Her Majesty in Council may extend the period of training to 56 days. Further, Her Majesty in Council may at any time reduce the period of training to less than 21 days, or suspend it entirely (*f*).

Embodiment. 48. In case of imminent national danger, or of great emergency, Her Majesty in Council may by proclamation order the militia to be embodied, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by proclamation, if Parliament be not sitting. The proclamation can order a

(*a*) Militia Act, 1882, ss. 4, 6. This enactment as to the orders rendered it unnecessary to re-enact the provisions of 34 & 35 Vict. c. 86, s. 6, and Militia Act, 1875, s. 21, as to the commissions to Militia officers and their ranking with officers of the regulars as the youngest of their rank.

(*b*) Army Act, s. 175 (3).

(*c*) Army Act, s. 71.

(*d*) Army Act, ss. 175 (2), 176 (2), 181 (2).

(*e*) Militia Act, 1882, ss. 14, 15. The time for preliminary training is as a rule three months.

(*f*) Militia Act, 1882, ss. 16, 17.

Secretary of State to give directions for actually calling out some or all of the militia for embodiment. When the militia is so ordered to be embodied, Parliament is to be summoned by proclamation to meet within 10 days, if it would not otherwise meet sooner (*a*). — **Ch. XI.**

49. The militia, whether English, Scotch, or Irish, are liable to serve in any part of the United Kingdom. They are not liable to serve abroad, but can volunteer for service in the Channel Islands, Isle of Man, Malta, and Gibraltar (*b*). **Liability to service.**

50. Her Majesty may by proclamation disembody the militia whenever she pleases. There is no statutory limit to the time during which the force can be kept embodied, but Parliament can practically enforce the disembodyment by refusing to vote the money for the maintenance of the force (*c*). Until the proclamation is issued a Secretary of State can give directions from time to time for actually calling out for embodiment or for disembodying any part of the militia. **Disembodyment.**

51. The application of military law to the militia is dealt with elsewhere (*d*). The provisions of the Army Act as to the composition of courts-martial make officers of the regular forces and of the militia equally eligible to sit on all courts-martial, whether to try regulars or militiamen (*e*). **Application of military law to militia.**

52. Enlisted militiamen may, if the orders and regulations so allow, enlist in accordance with the conditions thereby fixed into the regular forces, and a militiaman so enlisting is thereby discharged from the militia (*f*). **Enlistment into regular forces.**

53. It is no offence for a militiaman when not embodied to enlist in the regular forces, unless on his attestation he makes a false answer with respect to his belonging to the militia; but if a militiaman when embodied, without fulfilling the conditions enabling him to enlist, enlists either in the regular, reserve, or auxiliary forces, or enters the navy, he is guilty of fraudulent enlistment; and if when not embodied he, without fulfilling the conditions enabling him to enlist, enlists in the reserve or auxiliary forces, or enters the navy, he is punishable for making a false answer. Any man belonging to the reserve, or yeomanry, **Fraudulent enlistment by militiaman.**

(*a*) Militia Act, 1882, ss. 18, 19.

(*b*) Militia Act, 1882, s. 12. For previous Acts empowering the Crown to accept voluntary offers by the Militia for service abroad, see Ch. ix, para. 81.

(*c*) Militia Act, 1882, s. 20. Clode, Mil. Forces, i. 49.

(*d*) See Ch. ix, para. 91; Army Act, s. 176 (6).

(*e*) Army Act, ss. 50, 178. The Militia Act of 1875 only prohibited the interchangeability of officers "save as in the Mutiny Act or Articles of War, or this Act otherwise provided;" but as no such provision was made, officers could only be interchanged under s. 37 of the Act of 1875, allowing officers of the regular forces to sit on courts-martial for the trial of Militia recruits during their preliminary training.

(*f*) Militia Act, 1882, s. 11.

Ch. XI. or volunteers, or navy, who enlists in the militia is punishable for making a false answer; and if he was at the time called out on permanent service or actual military service, he is guilty of fraudulent enlistment. A man guilty of fraudulent enlistment under this paragraph is not only punishable by military law, but (except in the case of enlistment by a militiaman into the regulars) can be punished by a court of summary jurisdiction with fine or imprisonment^(a).

Desertion
and absence
without
leave.

54. A militiaman who fails without excuse to come up for the preliminary training, or for the annual training and exercise, is guilty of absence without leave, and a militiaman who fails, without excuse, to come up for embodiment is guilty, according to circumstances, of desertion or absence without leave. A militiaman who is guilty of desertion or absence without leave either under this provision or under the Army Act, while subject to that Act, can be tried either by court-martial or by a court of summary jurisdiction, and in the latter case, can be sentenced to fine or imprisonment^(b).

Discharge.

55. An enlisted militiaman remains subject to the Militia Act until discharged according to the orders and regulations^(c).

Exemptions.

56. Certain exemptions of officers and men of the militia are mentioned elsewhere^(d).

Exceptional
position
of certain
localities.

57. The City of London, and the Tower Hamlets, still have their separate militias, as if they were separate counties, and in London the lieutenant's commission is granted to a number of persons, as was frequently done before the Restoration, and not to an individual, and is not granted under the Militia Act, 1882^(e). So also in Cornwall and Devon a regiment of miners is to be raised like the militia of a separate county^(f). A separate militia can be raised for the Cinque Ports, but in fact has not been raised for many years. Special provision is also made for the militia of the Isle of Wight^(g).

Yeomanry
—a volunteer
cavalry
force.

58. The Yeomanry of Great Britain are, in fact, volunteer cavalry, and consist of corps whose services have been offered to and accepted by the Sovereign, whether under the law existing before the Act of 1804^(h), or subsequently under the powers conferred by that Act.

(a) Militia Act, 1882, s. 26; Army Act, s. 13. He also forfeits bounty, under the Militia Regulations.

(b) Militia Act, 1882, s. 23.

(c) Militia Act, 1882, s. 9 (3).

(d) See Army Act, s. 181 (5), and note thereto.

(e) Militia Act, 1882, ss. 49, 50. See also above, Ch. ix. paras. 64 and 66, notes, 84.

(f) Militia Act, 1882, s. 49 (5). See also above, Ch. ix, notes to paras. 64, 66.

(g) Militia Act, 1882, s. 49 (1) (3).

(h) 44 Geo. III, c. 54, s. 3. That Act applied also to volunteer infantry, but was repealed as regards them by 26 & 27 Vict. c. 63.

59. The number is unlimited, and enlistment is voluntary. They do not rank as effective unless trained for six days or five successive days in each year, and they are liable in case of invasion or appearance of an enemy in force on the coast of Great Britain, to be required to assemble for military service in any part of Great Britain until a Royal proclamation declares the enemy defeated and expelled, and all rebellion which may have arisen on such invasion or appearance of the enemy suppressed. The yeomanry are also able, under certain circumstances, to assemble voluntarily for improvement in military exercise, or to act for the suppression of riots (a). They are entitled to certain allowances and daily pay when on training (b), and are subject to military law when being trained or exercised alone, thus differing from the volunteers.

Ch. XI.

Liabilities to training and service.

60. The officers are commissioned by Her Majesty in the same manner as officers of the regular forces, and rank with officers of the regular forces and the militia as the youngest of their rank; and with officers of volunteers, according to the date of their commissions (c).

Officers of yeomanry.

61. In Ireland the yeomanry, if formed, which they are not at present, would be on a different footing, and consist of troops voluntarily enrolled for the protection of property and the preservation of the peace in their locality (d), and would not be liable to be called out compulsorily.

Yeomanry in Ireland not formed at present.

62. The Volunteers of Great Britain consist of corps raised voluntarily, whose services have been offered to and accepted by Her Majesty. One corps, the Honourable Artillery Company of London, derives its origin from a fraternity or guild "of artillery of long-bows cross-bows and hand-guns," to whom Henry VIII granted a charter of incorporation in 1537 (e). The services of the other corps have been mostly accepted, either under the Act of 1804 (f), which still applies to the yeomanry, or under the Act of 1863 (g), now in force.

Volunteers of Great Britain.

63. The number of volunteers is unlimited, and the Queen may disband any corps. The word "corps" as applied to the volunteers, has rather a different meaning from that which it has hitherto had in this chapter. The

Numbers and corps of volunteers.

(a) 44 Geo. III, c. 54, ss. 5, 22, 23, and 46; 56 Geo. III, c. 39.

(b) 47 & 48 Vict. c. 55, s. 2; authorising regulations as to the pay and pensions of the yeomanry.

(c) 34 & 35 Vict. c. 86, s. 6; 41 Geo. III, c. 54, s. 26; 26 & 27 Vict. c. 65, s. 5. As to command, see below, para. 72.

(d) 42 Geo. III, c. 68.

(e) Raikes' Hist. of Hon. Artillery Company, i. 17; Clode, Mil. Forces, i. 401; Grose, Mil. Antiq. i. 143, *et seq.* The Volunteer Act, 26 & 27 Vict. c. 65, does not apply to the Hon. Artillery Company, which is regulated by special Royal Warrant.

(f) 44 Geo. III, c. 54, repealed as regards volunteer infantry by 26 & 27 Vict. c. 65.

(g) 26 & 27 Vict. c. 65, ss. 2, 13.

Ch. XI. volunteer corps, of whatever size, is the principal unit for all purposes: subscriptions and property belong to the corps, and vest in its commanding officer, and are administered under rules made by the officers and men of the corps; the men are enrolled in and the officers appointed to the corps, and the commanding officer of the corps has power to dismiss a man from the corps.

As many corps were too small to form a regiment, provision was made by the Act of 1863 for the formation of administrative regiments. These regiments have now disappeared, and the smaller corps have been consolidated into a larger corps and form companies in it. On this consolidation the property and subscriptions of the several constituent corps were vested in the commanding officer of the consolidated corps, to be managed according to its rules, but certain exceptions were made in favour of the companies corresponding to the constituent corps, as regards both the property and men belonging to them (*a*).

Expense of
volunteers.

64. Originally the corps were presumed to be supported by voluntary subscriptions, but for some years grants of money and arms have been made by the Government, on conditions requiring the volunteers to make themselves efficient by a certain amount of training.

Liability of
volunteers
to service.

65. In case of actual or apprehended invasion of any part of the United Kingdom, the occasion being first communicated to Parliament, or, if Parliament be not sitting, declared in Council and notified by proclamation, the Queen may order the volunteers to be called out for actual military service, and they are bound to serve in Great Britain until released by a proclamation declaring the occasion to have passed (*b*).

Regulations
of Secretary
of State.

66. A Secretary of State has power to make regulations for governing the volunteer force (*c*).

Application
of military
law to
volunteers.

67. The volunteers are subject to military law, when on actual military service; when being trained or exercised with any portion of the regulars, or with any portion of the militia when subject to military law; and when attached to, or otherwise acting as part of, any of the regular forces; but, except when on actual military service, the commanding officer must give due notice to the volunteers that they are about to become subject to military law (*d*). Provision is made for the discharge of volunteers and for the temporary arrest of a volunteer who misconducts himself when not under military law.

Officers of
volunteers.

68. The officers are commissioned by Her Majesty in the same manner as officers of the regular forces, and rank

(*a*) Regulation of Forces Act, 1881, s. 9.

(*b*) 26 & 27 Vict. c. 67, s. 17.

(*c*) 26 & 27 Vict. c. 65, s. 16.

(*d*) Army Act, s. 176 (*s*).

with officers of the regular forces and the militia as the youngest of their rank, and with officers of the yeomanry according to the dates of their commissions (a). **Ch. XI.**

69. There are no volunteers in Ireland.

Ireland.

70. A permanent staff has been provided for the yeomanry and volunteers much in the same way as for the militia; and consists of officers and non-commissioned officers, who serve permanently at the head-quarters, and attend to the administration of the corps and the training of the men. They are all subject to the Army Act. Soldiers posted to the permanent staff of a volunteer corps belong to the territorial regiment within whose district the head-quarters of the corps are situate.

Permanent staff of yeomanry and volunteers.

71. The requirement that courts-martial for trying men belonging to the yeomanry or volunteers should consist of yeomanry or volunteer officers only, was abolished in 1879, but a rule of procedure requires that on the trial of a person belonging to the auxiliary forces, one member of the court shall, if practicable, belong to those forces, and to the same branch as that to which the prisoner belongs (b).

Trial by court-martial.

72. The command to be exercised by yeomanry or volunteer officers over the regular forces and by regular officers over yeomanry or volunteers depends upon regulations made by the Queen (c). **Command.**

(a) 26 & 27 Vict. c. 65, s. 5; 34 & 35 Vict. c. 86, s. 6.

(b) Army Act, s. 50 (1); Rule 20 (B).

(c) Army Act, s. 71.

CHAPTER XII.

RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE.

1. The English law on this subject differs from that of some foreign countries, and a man who becomes a soldier does not cease to be a citizen (*a*). If he commits an offence against the ordinary criminal law, he can be tried and punished as if he were a civilian, and serious liabilities are incurred by any officer who refuses to deliver him up to the civil magistrate on application (*b*).

2. On the other hand, his civil rights and duties are necessarily subject to some limitation for the purpose of enabling him to fulfil his engagement to serve the Crown (*c*). Thus he cannot, while in the service, change his domicile, or change the parish of his settlement (*d*). If he marries without the consent of the military authorities, the marriage is legal, but his wife will not be provided for by those authorities, and he is not punishable for deserting or neglecting to maintain his wife or family, or leaving them chargeable to the union. Special provision has, however, been made for proceeding against him to compel him to maintain his wife and family or bastard child, and for the deduction of a certain sum from his pay for the purpose of such maintenance (*e*).

(*a*) Clode, *Mil. Forces*, i. 144; ii. 143. As to the duty of soldiers to perform their part as citizens in repressing breaches of the peace, Chief Justice Sir James Mansfield thus spoke, in 1802: "Since much has been said about soldiers, I will correct a strange mistaken notion which has got abroad, that because men are soldiers they cease to be citizens; a soldier is gifted with all the rights of other citizens, and he is as much bound to prevent a breach of the peace or a felony, as any other citizen. . . . If it is necessary for the purpose of preventing mischief, or for the execution of the laws, it is not only the right of soldiers, but it is their duty to exert themselves in the assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is, therefore, highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon him the additional character of a soldier, puts off any of the rights or duties of an Englishman." *Burdett v. Abbott*, 4 Taunt., p. 401.

(*b*) Army Act, ss. 39, 41, 162. Under the Jurisdiction in Homicides Act, 1862 (25 & 26 Vict. c. 65), a person subject to military law who is charged with the murder or manslaughter of any other person subject to military law in England or Ireland, may be tried in London or Dublin more speedily than under the ordinary law.

(*c*) Clode, *Mil. Forces*, i. 206.

(*d*) Clode, *Mil. Forces*, ii. 37, 38, and the legal cases there cited.

(*e*) Army Act, s. 145.

3. Certain restrictions have also been imposed on the creditors of the soldier, so as to prevent the Crown losing his services. He cannot be arrested or compelled to appear before a court on account of any debt, damages, or sum of money under 30*l.*; but the exemption applies to the person not to the property of a soldier, and a creditor may sue and have execution, so long as he does not touch the person, pay, or military equipment of the soldier. To avoid injustice to the public from this exemption, the proclamation of "crying down credit" has been adopted, originally under an Article of War, and now under the Queen's Regulations (*a*). An officer or soldier is unable, legally, to charge or assign his pay or pension (*b*).

Ch. XII.

Restrictions on creditors of soldier.

4. An officer or soldier on actual military service has power to make, as to his personal estate, a nuncupative will, that is to say, a will without writing, declared before a sufficient number of witnesses (*c*). Probate of the will and letters of administration of any common soldier, who is slain or dies in the service of Her Majesty, are exempt from stamp duty (*d*). Special provision has been made for collecting and realising the effects of a deceased officer or soldier, and paying certain military debts thereout (*e*).

Wills of officers and soldiers.

5. Officers are entitled to an exemption from licence duty for any servant who is a soldier in the army, and is employed by the officer in accordance with the regulations of the service (*f*).

Exemption of soldier servants from licence duty.

6. Every non-commissioned officer and soldier whilst on service, is entitled by statute, independently of any post-office regulations for the time being in force, to send or receive letters not exceeding half an ounce by post for one penny pre-paid, but any foreign postage in addition must be paid. Where a letter is re-directed, an officer as well as a non-commissioned officer or soldier is entitled to receive the letter free from any postage, foreign or other, chargeable in respect of the re-direction (*g*).

Privileges of soldiers in relation to letters.

7. Officers and soldiers have not any personal exemption from any local rates or tolls, but where an officer occupies property in respect of his office the occupation is treated as occupation by the Crown, and he is not liable to

Exemptions from local rates and tolls.

(*a*) Army Act, s. 144; Q.R., Sect. VII.

(*b*) Army Act, s. 141.

(*c*) This privilege was reserved to soldiers and sailors by 29 Cha. II, c. 3; and now by 7 Will. IV. and 1 Vict. c. 26, s. 11. As to when a soldier is on actual military service, see Williams on Executors, 8th edn. p. 118.

(*d*) 55 Geo. III, c. 184, sched. part 3.

(*e*) Regimental Debts Act, 1893, 56 & 57 Vict. c. 5. Regulation of Forces Act, 1881, s. 51.

(*f*) 32 & 33 Vict. c. 14. The exemption from the licence duty for keeping a horse, which is given by the same Act, is rendered unnecessary by the repeal of the licence duty by 37 & 38 Vict. c. 16.

(*g*) 3 & 4 Vict. c. 96, s. 53; 10 & 11 Vict. c. 85, s. 7; 23 & 24 Vict. c. 65; 38 & 39 Vict. c. 22, s. 7; Q.R., Sect. VII., which is based on a letter from the Treasury to the War Office of 15th July, 1885.

Ch. XII. be rated in respect of that property, inasmuch as the Crown is exempt from local rates. If, therefore, the occupation is for his own personal benefit, and not for the benefit of the Crown, an officer will be liable to be rated like any other individual. Similarly, officers and soldiers, when on duty, are exempt from tolls (*u*), but are not so exempt when travelling for their own purposes only.

Exemption
from service
on juries,
&c.

8. Officers of the army, militia, or yeomanry, while on full pay are exempt in England from serving on juries (*b*). This exemption is an absolute exemption from serving on a coroner's jury, but as regards a grand jury or common jury is qualified, as it is only an exemption from being placed on the jury list, and if an officer is on the list he is bound to serve notwithstanding his exemption. Care must therefore be taken to claim the exemption at the time when the lists of jurors are made out in August and September. A soldier is entitled to a similar exemption from serving on juries anywhere (*c*). Officers on full pay or half-pay are also exempt from being compelled to serve any municipal office in England (*d*). Officers are also exempt from serving the office of overseer (*e*). The above provisions may have been made for the purpose of enabling an officer to fulfil his military duties, but the provision of the Army Act which disqualifies an officer on the active list for holding the office of sheriff, mayor, alderman, or any municipal office in any place in the United Kingdom, was doubtless originally enacted from jealousy of the military forces acquiring any undue influence by holding influential offices. This provision, however, does not render an officer ineligible for membership of a county council (*f*). Officers on full pay are prohibited by the Queen's Regulations from joining the directorate of any public or other company without permission from the Commander-in-Chief (*g*).

Right to
vote at
Parliamentary
election, and to
sit in
House of
Commons.

9. An officer or soldier has the same right as a civilian to vote at an election for members of Parliament, and if himself elected, is entitled without leave or order to attend the House of Commons (*h*). The acceptance by a member

(a) Army Act, s. 143. The Local Acts regulating turnpike roads, &c., usually contain like exemptions.

(b) 33 & 34 Vict. c. 77, s. 9, and schedule.

(c) Army Act, s. 147.

(d) 45 & 46 Vict. c. 50, s. 253.

(e) Owen's Manual for Overseers, p. 5.

(f) Army Act, s. 146.

(g) Q. R., Sect. VI, para. 10.

(h) Clode, Mil. Forces, i. 192, 195. The statement that an officer or soldier is entitled without leave to go to a place of election and record his vote appears to have been based upon 10 & 11 Vict. c. 21, which repealed the former Act (8 Geo. 2, c. 30). Those Acts never applied to persons out of the United Kingdom, and as regards persons in the United Kingdom, appear to have been merely intended to save from the enactments prohibiting soldiers being present at a place of election, those of them who were entitled to attend and vote.

of the House of Commons of a first commission in the army vacates his seat, but the acceptance of a new commission by a member already a commissioned officer does not vacate his seat; and it may be that an officer in the army will not vacate his seat by the acceptance of an office which, if filled by a civilian, would vacate the seat (*a*). An officer or soldier, if in the United Kingdom, ought to be allowed, if he wishes, to go to the place of election and record his vote, unless military exigencies render it impossible (*b*). But soldiers not being electors are excluded, in Great Britain, though not in Ireland, from being present at places of election (*c*).

10. In conclusion may be noticed the Act which enables military savings banks to be established for the purpose of military deposits from non-commissioned officers and soldiers, under regulations made by the Secretary of State for War, with the concurrence of the Commander-in-Chief and of the Treasury (*d*).

**Military
Savings
Banks.**

(*a*) 6 Anne, c. 41, s. 27 (c. 7, s. 28 in ordinary editions). Clode, *Mil. Forces*, i. pp. 192, 193.

(*b*) As to right to vote in respect of occupation of quarters, see *Atkinson v. Collard*, L.R. 16, Q.B.D. 254.

(*c*) 10 & 11 Vict. c. 21; 26 & 27 Vict. c. 12. For the history of the old practice of keeping soldiers out of assize towns during the holding of assizes, see Clode, *Mil. Forces*, ii. pp. 203-205.

(*d*) 22 & 23 Vict. c. 20.

CHAPTER XIII.

SUMMARY OF THE LAW OF RIOT AND INSURRECTION.

Object of
chapter.

1. The object of this chapter is to give such an explanation of the law relating to unlawful assemblies, riots, and insurrections as may be useful to officers when called upon by the civil authorities to assist them in suppressing disturbances (a).

Definition
unlawful
assembly.

2. The first question is, What is an unlawful assembly? for the mere gathering together of people is no crime in the eye of the law. "There is no doubt that the people of this country have a perfect right to meet for the purpose of stating what are or even what they consider to be their grievances; that right they always have had, and I trust always will have; but in order to transmit that right unimpaired to posterity, it is necessary that it should be regulated by law and restrained by reason" (b).

An unlawful assembly, then, is any meeting whatsoever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the Queen's subjects, as where great numbers complaining of a common grievance meet together, armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests; for no one can foresee what may be the event of such an assembly (c). The commission of an act of violence by any one or more of those assembled, is not necessary to make the assembly unlawful, if its character and circumstances are such as to be calculated to alarm, not only foolish or timid people, but persons of reasonable firmness and courage (d).

Example of
lawful
assembly.

3. Accordingly, in the case of a Chartist meeting at Newport in 1839, an assembly was held to be unlawful in

(a) Riot is a common law offence; the term insurrection is used in this chapter as a description of the offence that is technically called "levying war against the Queen."

(b) Charge of Baron Alderson to the Grand Jury in *R. v. Vincent*, 9 Car. & Payne, 65.

(c) Hawkins, Bk. i. ch. lxxv. sec. 9. See also *R. v. Vincent*, 9 Car. & Payne, 95; *R. v. Neale*, 9 Car. & Payne, 431.

(d) See the summing up of Baron Alderson in *R. v. Vincent*, 9 Car. & Payne, at p. 109.

which from 300 to 1,000 persons were gathered together, and in respect to which evidence was given that the speakers endeavoured to incite the people to disaffection and the use of physical force. No actual outrage was perpetrated, but numbers of persons armed with sticks were proved to have marched in procession, and several witnesses swore that they apprehended danger both to life and property (a). Ch. XIII.

4. A riot is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority with an intent mutually to assist one another against any who oppose them, in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people. It is immaterial whether the act done be unlawful or not, but there must be an act (b). Doing the act in a manner calculated to inspire people with terror is punishable, whether it be lawful or unlawful; but where the object of the assembly is lawful, it requires far stronger evidence of the terror caused by the means used, to induce a jury to return a verdict of guilty, than if the object were unlawful. Definition of "riot."

5. For example, persons assembling together on a race-course and tumultuously pulling down a booth, or gathering together in a tumultuous manner and breaking threshing machines, are guilty of a riot. Again, a number of persons assembling for a lawful object, such as pulling down an inclosure which has been illegally put up, will be guilty of a riot, if their assembling is accompanied with circumstances of actual force or violence calculated to inspire people with terror. On the other hand, if an assembly of persons be not accompanied with such circumstances as these, it can never be deemed a riot. Examples of riot.

6. An insurrection differs from a riot in this—that a riot has in view some enterprise of a private nature, while an insurrection savours of high treason, and contemplates some enterprise of a general and public nature (c). An insurrection, in short, involves an intention to levy war against the Queen, as it is technically called; or otherwise to act in general defiance of the government of the country. Definition of "insurrection."

7. For example, a mob assembling to pull down or burn Examples of insurrection.

(a) *R. v. Vincent*, 9 Car. & Payne, 91; and see *R. v. Neale*, *ib.* 431, in which the law is similarly laid down by Mr. Justice Littledale.

(b) Hawkins, Bk. 1, ch. lxx. sec. 9.

(c) Charge of Baron Alderson to the Grand Jury in *R. v. Vincent*, 9 Car. & Payne, p. 94. See Lord Mansfield's charge on the trial of Lord George Gordon in 1781, 21 State Trials, 644. Lord George Gordon was indicted for high treason, but acquitted on the ground that his acts, in the opinion of the jury, did not amount to constructive levying of war against the Crown.

Ch. XIII. a cotton mill, because the proprietor is obnoxious to them, are engaged in a riot. If the object were to attack a barrack or seize a store of arms with a view to arm themselves and make war against the government, they would be in a state of insurrection.

Case of *R. v. Frost*.

8. In the case of *R. v. Frost* (a), the insurgents, numbering about 5,000, were armed, many with guns or pikes, some with swords, others with mandrills (a kind of pickaxe for cutting coal), and others with scythes fixed on sticks, or with bludgeons. They marched to Newport in a sort of military order, and dangerously wounded a person sent out to reconnoitre. On arriving at Newport, they attempted to force their way into the Westgate Inn, where troops had been stationed by the mayor, and called upon the soldiers to surrender. On the reply being given, "No, never," they fired on the soldiers, who after a time returned the fire, when the insurgents dispersed.

In this case it was contended on behalf of the prisoners that the object of the insurgents was to procure the liberation of certain prisoners who were in custody at the Westgate Inn, and to obtain better treatment for a prisoner named Vincent. To this it was replied that the intention of the prisoners was to take possession of the town of Newport by surprise, terror, or force, and to use that possession as the means of raising a rebellion.

It was admitted that if the first of the above objects was the real one, the prisoners were not guilty of high treason, but evidence was given that the second was their real purpose, and that they had been planning an insurrection for some time. Accordingly, they were found guilty of high treason; in other words, the enterprise was considered to be an insurrection, and not a riot.

Distinction between unlawful assembly, riot, and insurrection.

9. It will be seen from the foregoing definitions and examples that an unlawful assembly and a riot are different stages as it were of the crime of insurrection. An unlawful assembly is an assembly which may reasonably be apprehended to endanger the public peace. As soon as an act of violence is perpetrated it becomes a riot; while if the act of violence be one of a public nature, and with the intention of carrying into effect any general political purpose, it becomes an insurrection or rebellion, and not a riot (b).

(a) 9 Car. & Payne, 129. This case also arose out of the Chartist movement in 1839, and should be compared with *R. v. Vincent*, ante.

(b) Baron Alderson in his charge to the Grand Jury, delivered at the Monmouth Assizes in 1839 (9 Car. & Payne, 94 n.), cited the following observations of Mr. Justice Bayley:—"If the persons who assemble together say, 'We will have what we want, whether it be according to law or not,' a meeting for such a purpose, however it may be masked, 'if it be really for a purpose of that kind, is illegal. If a meeting, from its general appearance, and from all the accompanying circumstances, 'is calculated to excite terror, alarm, and consternation, it is generally

10. As might be expected from the different character of the meetings, the offence of taking part in an unlawful assembly, a riot, or an insurrection involves very different degrees of guilt and very different punishments. A man convicted of being at an unlawful assembly, or of taking part in a riot, is guilty of a misdemeanour, and is punishable at common law by fine or imprisonment, or both ; but by statute there is this wide difference made between the two offences, that in the case of riot hard labour may be inflicted, whilst in the case of an unlawful assembly the imprisonment is without hard labour (a). A participator in an insurrection may be held guilty of treason and be capitally punished.

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Distinction in punishment.

11. The offence of taking part in a riot, or an insurrection, is independent of any additional crime which the persons assembled may either themselves commit, or of which they may be held to be guilty as principals, by reason of their forming part of the mob which commits such crime. For example, a riot seldom takes place without the rioters breaking into houses or otherwise destroying property. An insurrection almost always involves murder or attempts to murder. All persons present at the commission of such crimes are equally principals in the breaking into houses, destroying the property, murder, or attempt to murder, although at the time some of them take no actual part in the transaction at all : but practically the extreme measure of punishment is usually awarded only to the leaders (b).

Additional crimes usually incident to riots and insurrections.

12. The law would fall far short of what is needed for the preservation of society if it did not allow all necessary measures to be taken for dispersing or otherwise putting an end to unlawful assemblies, riots, and insurrection. The law accordingly declares that an unlawful assembly may be dispersed, although it has committed no act of violence ; for it is better that individuals should be stopped before they proceed to outrage and violence ; and a small amount

Suppression of unlawful assemblies, riots, and insurrections.

"criminal and unlawful." Baron Alderson continued, "These are, as I take it, the clear principles of law, an unlawful assembly differing in this respect from a riot, that a riot must go forward to the perpetration of some act which the unlawful assembly is calculated to originate and inspire. Something must be executed in a turbulent manner to constitute a riot, but in these cases it must be some enterprise of a private nature, because if the enterprise be of a general and public nature, it savours of high treason, and there is no doubt that if you find these persons assembled together by delegates dispersed from any central jurisdiction in this kingdom, and those persons so meeting together in consequence of a delegation from a central body commit any act of violence for the purpose of carrying into effect any general political purpose, they run the risk of being charged with high treason."

(a) 1 Hawk., c. 64, s. 12. By 3 Geo. IV, c. 114, hard labour may be given. As will be seen hereafter, rioters remaining for an hour after the Riot Act has been read become felons.

(b) See *R. v. Howell*, 9 Car. & Payne, 437.

Ch. XIII. of punishment in the first instance will probably save a great amount of crime afterwards (a).

Degree of force to be used in suppression of unlawful assemblies.

13. So far the law is clear ; but a grave practical difficulty arises as to the degree of force to be used in effecting the dispersion. If the assembly is verging on a riot, and the demeanour of those present shows that they are bent on serious mischief, it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly, even using force if necessary. If, on the other hand, the assembly is unlawful but in a slight degree, and there is no immediate apprehension of violence, it can scarcely be justifiable to attempt to disperse it by force, or wise, as a rule, to display force. No positive rule can be laid down, but different cases must depend on their own circumstances. If resort be had to force, the principle is that so much force only is to be used as is sufficient to effect the object in view, namely, the dispersion of the assembly ; and if injury results to any person from the use of that force, the question to be tried is whether the means used were or were not more violent than the occasion required (b).

Suppression of riots.

14. In dealing with riot, the law speaks more decidedly. Every magistrate, sheriff, constable, and other peace officer is required to do all that in him lies for the suppression of a riot, and each has authority to command all other subjects of the Queen to assist him in that undertaking. Every man is bound, when so called upon, to yield a ready and implicit obedience, and do his utmost to assist in suppressing any tumultuous assembly (c).

Extract from charge of Chief Justice Tindal.

15. " If the riot be general and dangerous, every subject may arm himself against the evil-doers to keep the peace. Such was the opinion of all the judges of England in the time of Queen Elizabeth in a case called 'The case of Arms' (Popham's Rep., 121) ; although the judges add that it would be more discreet for every one in such a case to attend and be assistant to the justices, sheriffs, or other ministers of the King in doing this. It would undoubtedly be more advisable so to do ; for the presence and authority of the magistrate would restrain the proceeding to such extremities until the danger was sufficiently immediate, or until some felony was either committed or could not be prevented without recourse to arms ; and, at all events, the assistance given by men who act in subordination and concert with the civil magistrate, will be more effectual to attain the object proposed than any efforts, however well intended, of

(a) By Baron Alderson in *R. v. Vincent*, 9 Car. & Payne, 94.

(b) *R. v. Neale*, 9 Car. & Payne, 435.

(c) Charge of Chief Justice Tindal to the Grand Jury in 1832, quoted in *R. v. Pinney*, 5 Car. & Payne, 262, note,

"separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law" (a).

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16. With regard to the circumstances which may justify the use of deadly weapons by those engaged in endeavouring to disperse a riot, Chief Justice Tindal, in the charge already quoted, made the following observations (b):—"There is one case which stands in a different situation from the rest, and to which it may be proper that I should call your particular attention—I mean the case of James Cossley Lewis, who is at present at large upon his recognizance, but who stands charged, upon an inquest before the coroner, with the offence of manslaughter, in shooting a boy of the name of Morris. It appears from the depositions before the coroner, that Lewis was acting in aid of the civil authorities in assisting to clear the streets, after proclamation had been regularly made, requiring the rioters to disperse themselves, and after they had continued together for more than an hour from the time of making proclamation. It appears, also, by the testimony of the witnesses that the pistol was not aimed at the boy who was unfortunately struck by the ball. The nature, however, of the offence committed by Lewis will not depend so much upon that fact as upon the circumstances under which the pistol was originally discharged. If the firing of the pistol by Lewis was a rash act, uncalled for by the occasion, or if it was discharged negligently and carelessly, the offence would amount to manslaughter, but if it was discharged in the fair and honest execution of his duty, in endeavouring to disperse the mob, by reason of their resisting, the act of firing the pistol was then an act justified by the occasion, under the Riot Act before referred to, and the killing of the boy would then amount to accidental death only, and not to the offence of manslaughter."

Use of deadly weapons by those engaged in dispersing riots.

17. There is no doubt that a person lawfully engaged in trying to apprehend a rioter is justified in using any

In apprehension of rioters.

(a) Charge of Chief Justice Tindal, quoted in *R. v. Pinney*, 5 Car. & Payne, 282, note. From early times the duty of sheriffs and magistrates to suppress riots and apprehend rioters, and the obligation of the people of the county to assist them have been laid down and enforced by statutes. Some of these, as for example, the 15 Rich. II. c. 2 (1391), the 13 Hen. IV. c. 7 (1411), the 2 Hen. V. st. 1, c. 8 (1414), are still unrepealed, and to some extent, at all events, in force.

(b) *R. v. Pinney*, 5 Car. & Payne, 267, note.

Ch. XIII. degree of force to protect himself, or to overcome resistance. It is, however, sometimes impracticable to attempt the apprehension of individuals, without using means calculated to occasion bloodshed, and the firing on a mob (which is what using deadly weapons practically means) can only be excused by the necessity of self-protection, or by the circumstance of the force at the disposal of the authorities being so small that the commission of some felonious outrage—such as the burning of a mill, or the breaking open of a prison, or the attacking of a barrack—cannot be otherwise prevented (*a*).

In suppression of insurrections.

18. The observations made above with respect to the duty of suppressing riots apply still more strongly to insurrections, or “riots which savour of rebellion.” In such cases the use of arms may be resorted to as soon as the intention of the insurgents to carry their purpose by force is shown by open acts of violence, and it becomes apparent that immediate action is necessary.

Account of Riot Act.

19. The expediency of arming the civil power with authority to put an end to serious risings, before the commission of actual outrage, was doubtless the motive which led to the passing of the Riot Act (1 Geo. I, stat 2, c. 5) in 1714 (*b*).

Effect of proclamation under Act.

20. The first section declares: “That if twelve or more persons, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any justice, by proclamation to be made in the King’s name, to disperse themselves, and peaceably to depart, shall unlawfully, riotously, and tumultuously remain or continue together for one hour after the proclamation, they shall be adjudged felons.” Suppose, therefore, a riot to have commenced, and the authorities present to be of opinion that serious consequences may be apprehended if the rioters are not dispersed within a limited time, it would be their duty to make the proclamation required by this Act; and if twelve or more persons remain together after the expiration of an hour they may be treated as felons, and will be subject to the punishment of penal servitude for life, or not

(*a*) In the Six Mile Bridge case or riots at the County Clare election in 1852, an escort of two officers, two serjeants, and forty rank and file, employed to protect voters going to poll, were attacked and stoned by the mob. The soldiers fired without orders from their officers, but, as was subsequently sworn by the commanding officer, *in defence of their own lives*, and killed two or three of the mob. Indictments were preferred against those who fired, or were supposed to have fired, but the bills were thrown out by the Grand Jury. The charge of Mr. Justice Perrin to the Grand Jury in this case appears virtually to ignore the riotous character and unlawful object of the mob, and the fact of the unprovoked attack on the soldiers.

(*b*) Similar Acts had previously been passed. 3 & 4 Edw. VI, c. 5; 1 Mar. st. 2, c. 12.

less than seven years, or to imprisonment with or without **Ch. XIII.**
hard labour, not exceeding three years.

21. The form of the proclamation and the mode of making it are provided for in the next section, which directs the justice, among the rioters, or as near them as he can safely come, to command silence, and then with a loud voice to make proclamation in the following words :—

Form of proclamation.

“Our Sovereign Lady the Queen chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George the First, for preventing tumults and riotous assemblies.

“God save the Queen” (a).

22. Further, section 3 provides that persons remaining for one hour after the proclamation may be seized and apprehended by any justice or person assisting him ; and that if any of the persons so unlawfully assembled happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting, then the justices, constables, and persons assisting such justices and constables shall be fully indemnified for any such killing, maiming, or hurting (b). Persons hindering the reading of the proclamation, and if the proclamation be hindered, persons not dispersing within an hour after the hindrance, suffer the same punishment as persons who remain together for an hour after the reading of the proclamation.

Effect of remaining for an hour after proclamation.

23. In the riots excited by Lord George Gordon in 1780, the mob were allowed to proceed to great excesses without any interference by the civil or military authorities ; and this appears to have been allowed under the impression that until the proclamation in the Riot Act was read, the dispersion of the rioters would be illegal. To correct this impression Lord Loughborough made use of the following language :—

A riot may be dispersed before the proclamation in the Riot Act is read.

“It has been imagined because the law allows an hour for the dispersion of a mob to whom the Riot Act has been read (c) by the magistrate, the better to support the

(a) In *R. v. Child*, 4 Car. & Payne, 442, it was decided that if in reading the proclamation from the Riot Act the magistrates omit to read the words “God save the Queen” at the end of it, persons remaining together for an hour after such reading of the proclamation cannot be convicted under s. 1 of the Act.

(b) As to punishment, see 7 Will. IV & 1 Vict. c. 91, s. 1 ; 9 & 10 Vict. c. 24, s. 1 ; 20 & 21 Vict. c. 3, s. 2.

(c) This expression, though very common, is not strictly accurate. Not the Act but only the proclamation is required to be read or recited,

Ch. XIII. — “civil authority, that during that period of time the civil “power and the magistracy are disarmed, and the King’s “subjects, whose duty it is at all times to suppress riots, “are to remain quiet and passive. No such meaning was “within view of the legislature, nor does the operation of “the Act warrant any such effect. The civil magistrates “are left in possession of those powers which the law had “given them before. If the mob collectively, or a part of “it, or any individual, within or before the expiration of “that hour attempts or begins to perpetrate an outrage “amounting to felony, to pull down a house, or by any “other act to violate the law, it is the duty of all present, “of whatever description they may be, to endeavour to “stop the mischief and to apprehend the offender” (a).

Further ob-
servations.

24. This passage shows that the Riot Act does not destroy any power which lawfully existed before its passing for the suppression of riot. But it also admits the inference that, as a general rule, it would be extremely imprudent to use an armed force against a mob until the proclamation required by the Act has been made and the appointed space of an hour elapsed, except in circumstances where either the proclamation cannot be read owing to the violence of the mob, or the mob before the expiration of an hour after it has been read, perpetrate or are evidently about to perpetrate some outrage amounting to felony. In every such case, when it arises, the question has to be decided—At what point does the felonious purpose become so manifest as to justify action?

Circum-
stances
which may
guide
authorities
in use of
force.

25. Undoubtedly the question is difficult, but many circumstances suggest themselves, which may serve as a guide to justices and officers called on to act in cases of sudden tumult. The first question they will ask themselves is for what purpose has the mob come together? as a knowledge of the purpose of the mob usually furnishes the most certain clue to a determination of the time and mode in which forcible interference should take place. For example, a mob assembles for the purpose of pulling down an obstacle to a footpath, which has been obstructed either illegally or with doubtful legality. Their proceedings may be disorderly, but their purpose may be legal, and certainly is not felonious. The probability is that as soon as they have effected their object they will disperse. In such a case, the best course is to use no force, but merely to take means to identify some of the parties concerned, with a view to subsequent proceedings, if necessary.

Further
illustra-
tions.

26. On the other hand, suppose a mob determined to destroy the cotton mill of an obnoxious proprietor. They arm themselves with weapons to break open the doors, and

(a) 21 Howell's State Trials, 493.

they show a settled intention to carry their object into effect. In such a case their intent is felonious, but they should be warned of the danger they will incur in attempting such an outrage, and the proclamation in the Riot Act should, if time allow, be read; and whether it has been read or not, and whether the hour after the reading has or has not expired, the apprehension of the ringleaders, or any other repressive measures which may be necessary to prevent the actual commission of an outrage, should be effected, if possible. Soldiers may be summoned in case the civil authority is in danger of being overpowered, but they should not be called into action till the necessity arises for protecting life and property by military force.

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27. Take another instance. A meeting assembles in procession with a view to political objects, say the furtherance of Parliamentary reform, the abolition of an obnoxious tax, or any other political object not involving rebellion against the established authority, or a clear intention to enforce by violence the object, though legal, which they have in view. It is, of course, quite possible that excitement may prompt them to outrage, but such a meeting, so long as it commits no act of violence, should be interfered with as little as may be, and no exhibition of force should take place till some violent crime has been or is about to be committed.

Further illustrations.

28. On the other hand, an assemblage which declares openly that it proposes to attack the constituted authorities, and which consists wholly or partially of armed men; or an attempt like that of the Fenians at Chester in 1867 to seize a castle for the purpose of obtaining arms cannot be too quickly dealt with, and force should be repelled by force, care being taken to avoid any unnecessary bloodshed or injury.

In case of insurrection.

29. The conclusions deducible from the foregoing pages appear to be as follows:—

Summary of law as to unlawful assemblies, riots, and insurrections.

1. Persons attending an unlawful assembly are guilty of a misdemeanour, and the magistrates may, and under certain circumstances ought, to disperse an unlawful assembly.

2. Rioters, before the proclamation contained in the Riot Act has been read and an hour has expired, are guilty of a grave misdemeanour, and may be dispersed by the magistrates. After the proclamation has been read and an hour has expired, all persons riotously continuing together, to the number of twelve or more, become felons, and the Act contains a clause indemnifying the officers and their assistants in case of any of the mob being killed or injured in the endeavour of the officers and their assistants to seize, apprehend, or disperse them,

Ch. XIII. 3. Insurgents, or persons engaged in an insurrection are guilty of treason, the gravest sort of felony, and it is the duty of the magistrates to take every lawful means to put down an insurrection.

Summary of law as to force to be used. 30. The law which commands the suppression of unlawful assemblies, riots, and insurrections necessarily justifies the civil power in using the necessary degree of force for their suppression. The difficulty is to ascertain what is this necessary degree of force, and the danger of making a mistake in the matter is serious, as any excess in the use of force constitutes a crime.

In case of unlawful assembly. 31. Beginning with an unlawful assembly, it would appear that the police have power to command those present to go away, and to arrest them if they do not go, also to stop others whom they see joining them (*a*). If the parties interfered with resist, such force may be used as will compel obedience; but it would be extremely unadvisable to use any such force as would maim or injure the person resisting, unless he himself made an attack inflicting, or at all events calculated to inflict, grievous personal injury on his captor.

In case of riot. 32. Proceeding to the case of a riot, before the proclamation required by the Riot Act is read, the same observations apply as in the case of an unlawful assembly. After the proclamation has been read and an hour has elapsed, considerable force may if necessary be used for the purpose of dispersing the mob. If the mob are committing, or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or are in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing, some felonious outrage, which can only be stopped by armed force.

In case of insurrection. 33. The existence of an armed insurrection would justify the use of any degree of force necessary effectually to meet and cope with the insurrection.

Application of preceding observations to troops aiding civil power. 34. Applying the foregoing rules respecting the use of force to soldiers, the following observations occur. Soldiers, when acting in aid of the civil power, in no respect differ, in the view of the law, from armed citizens. Their organisation prevents their being conveniently employed in using moderate force for the purpose of dispersing or apprehending rioters without doing them any injury; and as a general rule any action on their part involves the

(*a*) Hawkins, Bk. 1, ch. lxxv. sec. 11,

risk of inflicting death, or, at all events, grievous bodily harm. Soldiers, therefore, should never be required to act except in cases where the riot cannot reasonably be expected to be quelled without resorting to such means of repression. These cases are practically confined to riots in which violent crimes, such as murder, house-breaking, or arson, are being committed, or are likely to be committed, and to insurrections in which an intention is clearly shown to attempt by force of arms the overthrow of the government, or the execution of some general political purpose. Ch. XIII.

35. There remains to be considered the question on whom the responsibility of acting rests in the case of the military being employed in the suppression of disturbances. The primary duty of preserving public order rests with the civil power. An officer, therefore, in all cases where it is practicable, should place himself under the orders of a magistrate. On the other hand, an officer will not perform his duty who from fear of responsibility lies by and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate on the spot to give orders to the military. If the officer and magistrate are acting together, the obligation lies on the magistrate to give orders, and an officer would incur considerable responsibility by firing without his orders, or refusing to fire in pursuance of his orders. Still, the law of England is that a man obeys an illegal order at his own risk, and circumstances might arise which would justify the officer in firing or not firing, notwithstanding the magistrate might give orders to the contrary. The magistrate, also, if he acts with discretion, will necessarily defer in military matters to the opinion of an officer, and if he were to give orders to fire upon rioters, although dissuaded by the officer accompanying him, he would, as was said in the case of *R. v. Pinney*, have great difficulty in defending himself in the event of death occurring, should he be indicted for manslaughter (a). Division of responsibility between magistrates and military officer.

36. Complaint was made by Sir Charles Napier in his Remarks on Military Law of the hardship of imposing on an officer the obligation of deciding whether he is or is not justified in ordering his men to act. He contended that Opinion of Sir Charles Napier.

(a) See *R. v. Pinney*, 5 Car. & Payne, 273. "The next thing imputed against the defendant is that there was a want of energy in his conduct in not ordering the military to fire upon the rioters. Upon this part of the case it appears that he was intending to do so, but was dissuaded by Colonel Brereton and also by Major Mackworth, and if the defendant had given an order to fire upon the rioters, and death had ensued, he would, upon an indictment for murder or manslaughter, have had great difficulty to defend himself, if it had appeared that he had given the order to fire against the advice of two distinguished military officers." As to the liability of subordinates, see ch. viii. para. 98.

Ch. XIII. an officer ought not to be liable to trial by the ordinary courts of justice for anything he may do in executing the duty imposed on him by the civil magistrate, namely, to quell the riot (a).

The answer is, that an officer has no greater responsibility than a civilian. Mr. Justice Littledale, in the case of *R. v. Pinney*, says :—

“ Now a person, whether a magistrate or a peace officer, who has the duty of suppressing a riot, is placed in a very difficult situation, for if by his acts he causes death, he is liable to be indicted for murder or manslaughter ; and if he does not act he is liable to an indictment on an information for neglect ; he is therefore bound to hit the precise line of his duty, and how difficult it is to hit that precise line will be matter for your consideration ; but that, difficult as it may be, he is bound to do. Whether a man has sought a public situation, as is often the case of mayors and magistrates, or whether as a peace officer he has been compelled to take the office that he holds, the same rule applies, and if persons were not compelled to act according to law, there would be an end of society.”

At the same time the law has always made liberal allowance for the difficulties of persons so circumstanced, and persons whose intention is honest and upright, and who act with firmness to the best of their judgment, need seldom fear the results of inquiry into their conduct.

(a) Remarks on Military Law (1837) 38, quoted Clode, *Mil. Forces*, ii 153.

CHAPTER XIV.

THE CUSTOMS OF WAR (a).

(i.) *General Principles.*

1. War, properly so called, is an armed contest between independent nations, and can only be made by the sovereign power of a State (b). War, a contest between independent nations.

2. In this country, a formal announcement of war is made by a proclamation issued by Her Majesty and posted in the City of London. Declaration of war.

3. The first consequence of the existence of a state of war between two nations is that every subject of the one nation becomes in the eye of the law an enemy to every subject of the other nation, for as every subject is politically a party to the act of his own government, a war between the governments of two nations is a war between all the individuals of each nation (c). General effect of commencement of war.

4. This principle, carried to its extreme limits, would authorise the detention, as prisoners of war, of subjects of one of the hostile parties travelling or resident in the country of the other at the time of the outbreak of war, and the confiscation of their goods. The exercise, however, of such a right is contrary to the practice of modern warfare; and the conduct of Napoleon cannot be justified, who, on the outbreak of the war with England in 1803, seized all the English travelling in France between 18 and 60 years of age, and detained 10,000 of them in prison, where they remained till the peace of 1814 (d). Detention of alien enemies at outbreak of war not justifiable.

5. The usage with respect to goods is to allow the Usage with respect to

(a) This chapter has been compiled for the use of officers. It has no official authority, and expresses only the opinions of the compiler as drawn from the authorities cited. The authorities on which this chapter is grounded, are, Vattel, *Le Droit des Gens*, Paris, 1835; Kent, *Commentaries on American Law*, sixth edition; *Le Droit International de l'Europe*, par A. G. Heffter, traduit par Jules Bergson, 1873; Halleck, *International Law*, by Sir Sherston Baker; Phillimore, *International Law*, first edition; Instructions for the government of armies of the United States in the field. A copy of these instructions will be found printed in Halleck, ii. 36.

(b) Halleck, i. 454; Steph. Comm. ii. 491.

(c) Kent, i. 54; Halleck, i. 480.

(d) Vattel, ii. 119; Halleck, i. 483-485; Alison, v. 113.

XIV. owners to dispose of them, or to leave them to be claimed by the owners on the restoration of peace (*a*).

6. The expulsion of subjects of the enemy from the territory of the opposing State is justifiable, and may be exercised or not according to circumstances. During the Crimean War Russians were allowed to reside quietly both in England and France. In the Franco-German War of 1870, hostile strangers were required to quit the soil of France within a few days after they had received notice to quit (*b*).

7. On the other hand, war is not a relation of man to man, but of State to State, and of itself implies no private hostility between the individuals by whom it is carried on; they are enemies only in their character of soldiers, and not as men (*c*).

8. The object of war, politically speaking, is the redress by force of a national injury (*d*). The object of war, in a military point of view, is to procure the complete submission of the enemy at the earliest possible period with the least possible expenditure of men and money.

9. The mode in which the object of war should be carried into effect amongst civilised nations is the subject matter of the customs of war, and will be explained in the following pages.

"For," says Lord Bacon, "wars are no massacres and confusions, but they are the highest trials of right, when Princes and States that acknowledge no superior on earth shall put themselves upon the justice of God for the deciding of their controversies by such success as it shall please Him to give on either side (*e*).

(ii.) *Means by which war should be carried on.*

10. The poisoning of water or food is a mode of warfare absolutely forbidden, but the turning off the water supply or stopping convoys of food to the enemy is one of the usual methods of reducing him to submission. The use of poisoned weapons and of weapons calculated to produce unnecessary pain or injury is prohibited, on the ground that, as the object of war is confined to disabling the

(*a*) Kent, i. 55-59; Halleck, i. 485, *et seq.*; Phillimore, iii. 115, *et seq.* assert the right to confiscate the goods of enemies found in the country of their opponents, but condemn its exercise; Vattel denies the right, ii. 119, 126.

(*b*) Heffter, 231.

(*c*) Vattel, ii. 123; Heffter, 227.

(*d*) Kent, i. 89; Vattel, ii. 93.

(*e*) Observations on a libel, Bacon, vol. i. of *Letters and Life*, p. 146, Spedding's edition.

enemy, the infliction of any injury beyond that which is required to produce disability is needless cruelty (*a*). **Ch. XIV.**

11. Assassination is against the customs of war. Assassination is the murder by treachery of individuals of the hostile forces. The essence of the crime is treachery, as a surprise is always allowable, and a small force may penetrate into the enemy's camp, dispatch the sentinels, and take the general prisoner or kill him without infringing any of the customs of war, or subjecting themselves if taken to be treated otherwise than as prisoners of war. It is the duty of the enemy to be prepared against a military surprise, but not to guard himself against the treacherous attacks of individuals introduced in disguise into his camp (*b*).

Assassination prohibited.

12. With the exception of the means above stated to be prohibited, any instruments of destruction, whether open or concealed, partial or widespread in their effects, shells of any weight, torpedoes, mines, and the like, may legitimately be employed against an enemy; and seeing that the use is legitimate, there is no reason why the officers or soldiers employing them should be refused quarter, or be treated in a worse manner than other combatants (*c*).

Enemy may be destroyed by all legitimate means.

A humane commander will, no doubt, so far as the exigencies of war admit, endeavour to provide that the effect of the explosion of a mine or torpedo should extend to combatants only; but practically no rule can be laid down on the subject.

The general principle is that, in the mode of carrying on war, no greater harm shall be done to the enemy than necessity requires for the purpose of bringing him to terms. This principle excludes gratuitous barbarities, and every description of cruelty and insult that serves only to exasperate the sufferings or to increase the hatred of the enemy, without weakening his strength or tending to procure his submission (*d*).

(*a*) Vattel, ii. 183-189; Heffter, 240; Halleck, ii. 22, 23. By the declaration of St. Petersburg, signed 11th December, 1868, by the plenipotentiaries of Austro-Hungary, Bavaria, Belgium, Denmark, France, Great Britain, Greece, Italy, Holland, Persia, Portugal, Prussia, the North German Confederation, Russia, Sweden, Norway, Switzerland, Turkey, and Wurtemberg, the contracting parties agreed to renounce the use by their forces on land or sea of any explosive projectile of a weight below 400 grammes (a little more than 14 ounces), charged with fulminating or inflammable matter.

(*b*) Vattel, ii. 184; Heffter, 242; Halleck, ii. 24.

(*c*) Halleck, ii. 20. See for a discussion on the subject, Journal of the Royal United Service Institution, vol. 22, 271 (1878).

(*d*) Heffter, 226; Paley, Moral Philosophy, ii. 468. "When the commander of a besieged place expels the non-combatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender."—Instructions for the government of the Armies of the United States in the Field,

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(iii.) *Person of the Enemy.*

definition
of enemy.

13. The enemy consists of—

1. Armed forces.
2. Unarmed population.

destruction
of com-
batants
authorised.

14. The first principle of war is that armed forces, so long as they resist, may be destroyed by all legitimate means. The right of killing an armed man exists only so long as he resists; as soon as he submits, he is entitled to be treated as a prisoner of war.

quarter to
be given.

15. Quarter should never be refused to men who surrender, unless they have been guilty of some such violation of the customs of war as would of itself expose them to the penalty of death; and even when so guilty they should, whenever practicable, be taken prisoners, and put on their trial before being executed, as it is seldom justifiable for a combatant to take the law into his own hands against an unresisting enemy (*a*).

care of
wounded.

16. The wounded must not only be spared, but humanity commands that if they fall into the hands of their opponents the care taken of them should be second only to the care taken of the wounded belonging to the captors.

destruction
of non-com-
batants un-
authorised.

17. Surgeons and other persons in attendance on the wounded, though forming part of the armed forces, are exempt from the liability of being attacked unless they divest themselves of their non-combatant character by actually using arms, in which case they may be treated as part of the combatant body. The same immunity, and under the same conditions, should be extended to sutlers, camp-followers, and other persons in attendance on the army, but not bearing arms (*b*).

treatment
of prisoners
of war.

18. The object of detaining prisoners of war is to prevent their taking part again in the operations of the war. So much restraint, therefore, and no more, should be applied as is sufficient for that purpose. They cannot be compelled to aid their captors in military operations, but they may be employed in any other manner suitable to their condition. The money which they earn by work should be placed to their credit, after deducting the expense of board. A prisoner of war who has committed an offence against the customs of war—such, for example, as stabbing or robbing wounded men—may be considered to have forfeited the character of a prisoner of war, and be punished

(*a*) Vattel, ii. 176; Halleck, ii. 73.

(*b*) Vattel, ii. 165-166; Heffter, 243. The medical staff, nurses, and other persons employed in hospitals and ambulances, are by the Geneva Convention considered as neuter during the period of their employment, and exempt from being made prisoners of war. The regulations on this subject, and also as to the care of the wounded, hospitals, and so forth, are set forth in the Geneva Convention printed below, p. 888.

with death for his crime (a). The primary obligation to support prisoners of war necessarily lies with the captor, and he should maintain them in a manner suitable to their condition (b). CH. XIV.

19. A prisoner of war, unless he has given a pledge or promise not to escape, is justified in making the attempt. He may be shot or otherwise killed in the act of escaping; but if retaken, he is not punishable by death or otherwise for having made the attempt, as the customs of war do not regard an attempt to escape on the part of a prisoner as a crime. On the other hand, a rising amongst prisoners of war with a view to effect a general escape may be rigorously punished, even with death, in a case of absolute necessity, as self-security is the first law of the conqueror, and the customs of war justify the use of means necessary to that end. Stricter means of confinement may be used after an unsuccessful attempt to escape (c). A prisoner of war cannot be ill-treated or punished for refusing to give information as to the forces to which he belonged, or for giving false information. Escape of prisoners of war.

20. Exchange is the ordinary mode of releasing prisoners of war, but a nation is not guilty of any breach of the customs of war in refusing to exchange its prisoners, and may detain them till the close of the war. Exchange of prisoners of war.

21. Prisoners of war are not unfrequently released on their pledging their word to observe certain conditions imposed by the captor. A prisoner of war, so pledging his word, is said to give his parole, and if his parole be accepted by the captor, to be paroled. The usual pledge given in the parole is not to serve during the existing war. This pledge only extends to active service against the enemy. It does not refer to internal service, such as recruiting or drilling recruits, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic services on which the paroled person may be employed (d). Release on parole.

22. Paroling is a voluntary contract entered into between two parties. The captor is not obliged to offer to parole a prisoner of war, and a prisoner of war cannot be compelled to give his parole, but may remain in captivity. A list of the names of officers and men paroled should always be made out in writing, and be accurately kept. No obligation to receive or give parole.

23. A prisoner of war has no authority to pledge himself. Authority to give parole.

(a) Yattel, ii. 167-177; Heffter, 247, 248; Halleck, ii. 73.

(b) Heffter, 248.

(c) Instructions for United States Armies, 77-8; Halleck, ii. 74.

(d) See Manuel de Droit International, for the use of officers of the French Army, 2nd ed., 1878, pp. 78, 79; also Instructions for United States Armies, 130.

Ch. XIV. self never again to serve against a particular enemy. The pledge must be confined to a limited time, as he cannot divest himself wholly of a duty which he owes to his sovereign and country. The right of a prisoner of war to give his parole may be still further limited by the laws of his own country. If a prisoner makes an engagement which is not approved of by his own government, he is bound to return and surrender himself to the enemy. As a general rule, a commanding officer has an implied authority to give his parole on behalf of himself and the officers and men under his command. An inferior officer ought not to give parole either for himself or his men without the authority of a superior officer, if such an officer be within reach. A soldier cannot, according to the English practice, give his parole except through a commissioned officer. A State has no power to force its subjects to act contrary to their parole; but how far it is authorised to refuse such parols, and to force its paroled subjects back into the enemy's lines would seem to be doubtful. As a general rule, it would appear advisable to admit the validity of the paroles, but to punish the individuals who have given them contrary to the law of their country.

Violation of parole. **24.** A re-captured prisoner who has violated his parole may be punished with death, but the modern practice usually is to abstain from the infliction of death, except in an aggravated case, and to substitute strict confinement, with severities and privations, not cruel in their nature or degree (a).

Protection of women and children. **25.** Old men, women, and children, wherever found, will be carefully guarded from outrage, unless they take up arms, in which case they subject themselves to the rigid rules of war applicable to combatants, and sometimes to still harsher treatment (b).

Treatment of non-combatant population. **26.** The general population of the enemy's country who form no part of the armed forces cannot justly be exposed, so long as they abstain from acts of hostility, to any description of violence. They cannot be required to join the ranks or to assist the operations of the invader in direct acts of hostility, but it has been the practice of war, sanctioned by necessity on making reasonable payment, to compel their services as guides, drivers, and workmen. On the other hand, they may be required to deliver up any arms in their possession, to give security for good conduct,

(a) Wheaton, *International Law* 8th ed., s. 343, note. As to paroling, see further Halleck, *il.* 77, 350, 351; *Instructions for United States Armies*, sec. 7; *Manuel de Droit International*, title 4, c. 1. It is to be observed that the French are inclined to accord greater liberty of paroling than the *Instructions for the United States Armies* or our practice would authorise.

(b) Vattel, *il.* 178; Halleck, *il.* 70-72.

and generally to conform to such rules and comply with **Ch. XIV.** such demands as may be considered necessary for the support or security of the invading army (a). —

27. Fugitives and deserters found in the enemy's ranks are traitors to their country, and liable to the penalty of death. They cannot be regarded as enemies in the military sense of the term, and are not entitled to the privileges of prisoners of war. If included by name or by reasonable intendment in a capitulation, they are entitled to the terms specially made for them, but cannot claim the benefits of any general agreement relating to prisoners of war (b). Punishment of fugitives and deserters

28. The first duty of a citizen is to defend his country, but this defence must be conducted according to the customs of war. These customs require that an enemy should be able to distinguish between the armed forces and the general population of the country in order that he may spare the latter, without exposing his troops to be attacked by persons whom he might reasonably suppose to be engaged only in peaceful occupations. Further, war must be conducted by persons acting under the control of some recognised government, having power to put an end to hostilities in order that the enemy may know the authority to which he may resort when desirous of making peace. Under ordinary circumstances, therefore, persons committing acts of hostility who do not belong to an organised body authorised by some recognised government, and do not wear a military uniform, or some conspicuous dress or mark showing them to be part of an organised military body, incur the risk of being treated as marauders, and punished accordingly. Irregular combatants.

29. No rule, however, can be laid down which is not subject to great exceptions; for example, the customs of war do not justify a commander in putting to death, or even in punishing the inhabitants of a town, after the attack has ceased, on the ground that they fought against him, without uniform or distinguishing marks, as all the inhabitants of a town may be considered as legitimate enemies until the town is taken. Similarly a population which rises *en masse* in a country not already occupied by the enemy are entitled to be treated as prisoners of war, and not as marauders; but in such case they must be formed into organised bodies (c). Again where the regular government of a country has been overthrown by civil tumult, the absence of the authority of a recognised government having power to make peace would not of Exceptions to general rule.

(a) Vattel, ii. 174.

(b) Vattel, ii. 173; Heffter, 245; Halleck, ii. 93.

(c) Heffter, 238; Halleck, ii. 6-8.

Ch. XIV. — itself disentitle organised bodies of men clearly distinguishable as foes, and fighting in conformity with the customs of war against a foreign enemy, to be treated when captured as prisoners of war.

Circumstances of each case must be regarded. 80. Every case must be judged by its own circumstances, having regard to the principle that persons other than regular troops in uniform, whose dress shows their character, committing acts of hostility against an enemy must, if they expect when captured to be treated as prisoners of war, be organised in such a manner, or fight under such circumstances as to give their opponents due notice that they are open enemies, from whom resistance is to be expected.

Retaliation. 81. Retaliation is military vengeance. It takes place where an outrage committed on one side is avenged by the commission of a similar act on the other. For example, an unjust execution of prisoners by the enemy may be followed by the execution of an equal number of prisoners by their opponents. Retaliation is the extreme right of war, and should only be resorted to in the last necessity (a). It may be well to notice, for the purpose of reprobating it, the idea once prevalent, that a garrison which obstinately defended a place after it had, in the opinion of the enemy, become untenable, might be put to the sword (b).

(iv.) *Property of Enemy (c).*

General principles. 32. The general principles of the customs of war applicable to the enemy's property are shortly these —

The object of war is compensation for an injury.

This compensation may or may not be held to include the expenses of the war.

To attain this object it is lawful to take from the enemy everything that conduces to his means of resistance, but it is unlawful to do his property any intentional injury which does not tend to bring the war to an end. The wilful destruction of museums, churches, or other monuments of art, is condemned by the modern usages of war (d).

The generality of these principles has by the usages of civilised nations been narrowed and reduced to special regulations distinguishing between public and private property and between property of different descriptions, adding at the same time exceptional modifications to meet cases of unusual difficulty (e).

(a) Vattel, ii. 168; Kent, i. 93, 94; Halleck, i. 422.

(b) Vattel, ii. 169; Halleck, ii. 90.

(c) Kent, i. 89, *et seq.*; Vattel, ii. 193; Heffter, 249.

(d) Kent, i. 93; Vattel, ii. 193.

(e) Kent, i. 83; Vattel, ii. 190.

33. A complete title to the land of a country is usually acquired by treaty, or by the entire submission or destruction of the State to which it belongs; but the use of public land and public buildings, and the receipt of the rents and other profits accruing from such lands and buildings, form part of the spoils of war (a). Ch. XIV.
Public
landed and
movable
property.

The arms, implements of war, stores, and every other description of movable property belonging to the State may be taken possession of by the invader (b). An exception to the right of seizure of movables of the enemy is made in the case of archives, historical documents, and judicial and legal records. The invader can hold them so long as he remains in the country and requires their use, but to take them away with him is an act of barbarism, and prohibited by the customs of war. The retention of such documents can by no means tend to put an end to the war, while it inflicts a great and useless injury on the country to which they belong (c). The seizure of scientific objects, pictures, sculptures, and other works of art or science belonging to the public has derived some sanction from the repeated practice of civilised nations; but would seem incompatible with the admitted restriction of the rights of war to depriving the enemy of such things only as enable him to make resistance, and can only be justified as a measure of retaliation (d).

34. Belligerents in modern times usually abstain (so far as is consistent with the exigencies and operations of war) from exercising the extreme right conferred by war of seizing or injuring private property or land (e). This custom obtains only so long as not only the owners, but also the community to which they belong, abstain from all acts of hostility, as it is not unusual for an invader to take Private
landed and
movable
property.

(a) Kent, i. 109; Halleck, ii. 97; Wheaton, pp. 437, 438, note.

(b) Vattel, iii. 226; Halleck, ii. 101; Wheaton, p. 438, note.

(c) Halleck, ii. 103.

(d) Kent, 183; Halleck, ii. 104; Wheaton, sec. 352-354. "On y joint i.e., sous le titre biens publics) encore les monuments historiques, les œuvres d'art ou de science, qui n'appartiennent pas à des particuliers.

" Ces biens sont protégés, comme la propriété privée, par une prescription toute moderne, que constitue une des plus importantes conquêtes du droit des gens : l'interdiction du pillage et du butin.

" Dans cette catégorie (i.e., les biens affectés à un usage public et tenant à l'instruction et aux arts, &c.) rentrent les établissements hospitaliers de tous genres, les écoles, les établissements consacrés aux cultes, les musées, les bibliothèques, les archives publiques, les collections historiques, artistiques, ou scientifiques, et les objets, monuments, et travaux d'art ou de science, qui sont en dehors des musées. Tous ces biens doivent être respectés par l'occupant autant et plus même que la propriété privée; non-seulement les lois de la guerre ne permettent plus que l'occupant se les approprie, mais elles les placent sous sa protection particulière, et lui imposent l'obligation de les préserver de toute atteinte."—Manuel de Droit International. Ouvrage autorisé pour les écoles militaires, ed. 2, pp. 113, 119.

(e) Halleck, ii. 108.

Ch. XIV. or destroy the property of individuals by way of punishment for any injury inflicted by them, or by the community to which they belong, on the troops which he commands. In such cases the innocent no doubt must necessarily suffer for the guilty; but a humane general will not, except in an extreme case, destroy a village for an outrage committed by an inhabitant of that village, or ravage a district to punish an attack made within its limits by a body of marauders (*a*).

Requisitions. **35.** A frequent mode adopted by a belligerent of making the inhabitants of a district contribute to the expenses of war without the actual seizure of private property, is the imposition on the community to which they belong of requisitions for forage, carriages, provisions, or money.

Mode of making requisitions. **36.** Requisitions may be made in three ways.

1. The inhabitants may be required to provide supplies without payment.

2. They may be required to provide supplies at a moderate cost, without any regard being had to the increased value accruing from the presence of an army.

3. They may be required to provide supplies on payment of such price as they demand.

Which of these three ways is to be adopted is in the discretion of the general. The Duke of Wellington disapproved of forced requisitions whenever they could be avoided, and on entering France sent the Spaniards back rather than resort to them (*b*). Both Germans and French have constantly exercised the right, and undoubtedly the stern rule admitted by the customs of war is that war may be made to support war.

Contributions. **37.** The same principles apply to contributions of money levied on a town or community. As a punishment, such a levy is absolutely just; as a means of maintaining an army it is lawful, and possibly more equitable than requisitions. The question is whether it is expedient (*c*).

Authorised pillage. **38.** Authorised pillage is an extreme mode of laying contributions on individuals, and should only be resorted to in the last necessity. It differs from unauthorised pillage in the fact that in the latter case the plunderer is a mere robber, seeking food or gain for himself, and robbery in war is scarcely less a crime than robbery in peace; while in the former case he acts under the orders of his commander, and the supplies he obtains go to the support of others as well as himself (*d*).

Description of booty of war. **39.** The property of the enemy, whether public or private, found on the field of battle, in a camp taken by

(a) Halleck, ii. 109.

(b) Napier, Pen. War, v. 415.

(c) Vattel, ii. 196; Heffter, 252; Halleck, ii. 109, *et seq.* Kent, i. 92

(d) Halleck, ii. 113.

assault, or a town delivered up to pillage, forms spoils of war under the name of booty (a). Such property does not belong to the troops who actually capture it. By English law it is technically the property of the Sovereign. Practically it is distributed by order of the Sovereign amongst the army of which the troops who made the capture form part.

40. The pillage of a town taken by assault is an act of barbarism excusable only by the difficulty of putting a stop to it. English officers always endeavour to prevent it; but as has been before observed, if carried into effect, any property seized must be taken from the individual captors and distributed as booty of war (b).

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Condemnation of pillage of towns.

(v.) *Spies and Stratagems.*

41. A spy, in a military sense, is a person who is found in a district occupied by the enemy collecting, *secretly and in disguise*, information respecting his condition and designs, with a view of communicating such information to the opposing force. Secrecy and disguise are the essential characteristics of a spy in a military sense. An officer in uniform, however nearly he approaches to the enemy, or however closely he observes his motions, is not a spy, and if taken must be treated as a prisoner of war (c).

Definition of spy.

Spies, when taken, are punishable with death, since, as Vattel observes, there is scarcely any other means of guarding against the mischief they may do. The services of spies must be secured by rewards, as no one can be called upon to undertake the office of a spy as a matter of duty or against his will (d).

A commander may, of course, avail himself of information, if given by a traitor; how far he is justified in endeavouring to suborn treachery is a more difficult question. Such transactions are said by Vattel to be not

(a) Vattel, ii. 195; Heffter, 258; Halleck, ii. 114.

(b) Napier, Pen. War, v. 285. By the Army Act every person subject to military law who commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving, or breaks into any house or other place in search of plunder, is punishable with death.

"Au commencement de ce siècle, les lois de la guerre autorisaient encore un général à promettre à ses soldats, pour exciter leur ardeur, le pillage de la ville assiégée. Il n'en est plus de même aujourd'hui; le pillage est absolument et toujours interdit; l'assiégeant ne doit ni le promettre ni l'autoriser.

"En principe, donc, une ville prise d'assaut ne doit être ni livrée au pillage, ni soumise, à raison de sa résistance, à un traitement plus rigoureux qu'une ville non défendue."—Manuel de Droit International, pp. 23, 24.

(c) Halleck, ii. 33.

(d) Vattel, ii. 210-214 Heffter, 467; Halleck, ii. 30, et seq.

Ch. **XIV.** uncommon, although never boasted of by those who have entered on them (*a*). An officer may feign to be a traitor for the purpose of ensnaring an enemy who attempts to corrupt his fidelity; but if he voluntarily makes overtures to the enemy under pretence of being a traitor, and then deceives the enemy with false information, his conduct is dishonourable and contrary to the customs of war.

Stratagems
allowable.

42. False attacks, the dissemination of false information, and in short, every mode of deceiving the enemy by act or word which is not perfidious, is permissible by the customs of war. Indeed, to take a town by surprise, or turn a position by a stratagem, is more glorious to a general than to effect the object by force; in proportion as to win a great battle with little slaughter is more creditable to the skill of a general than to gain a bloody victory.

Perfidy not
allowable.

43. It must, however, be observed that no deceit is allowable, where an express or implied engagement exists that the truth should be acted or spoken. To violate such an engagement is perfidy, and contrary alike to the customs of war and the dictates of honour. For example, it is a gross breach of faith and an outrage against the customs of war, to hoist a hospital flag on a building not appropriated to the wounded, or to use a place protected by a hospital flag for any other purpose than a hospital (*b*).

Example.

(vi.) *Military Occupation (c).*

Definition
of military
occupation.

44. An invader is said to be in military occupation of so much of a country as is wholly abandoned by the forces of the enemy. The occupation must be real, not nominal; "a paper occupation is infinitely more objectionable in its character and effects than a paper blockade." On the other hand, the occupation of part of a district from the whole of which the enemy has retired is necessarily an occupation of that district, as it is impossible in any other way to occupy any considerable extent of territory. The true test of military occupation is exclusive possession. For example, the reduction of a fortress which dominates the surrounding country gives military possession of the dominated country, but not of any other fortress which does not submit to the invader. Military occupation ceases as soon as the forces of the invader retreat, or advance in such a manner as to quit their hold on the occupied territory.

Nature of
rule of

45. In the event of a military occupation, the authority

(*a*) Vattel, ii. 211.

(*b*) Vattel, ii. 207; Halleck, ii. 25, *et seq.*

(*c*) See Halleck, ii. ch. 32.

of the regular government is supplanted by that of the invading army. The rule imposed by the invader is the law of war. It is not the law of the invading State, nor the law of the invaded territory. It may in its character be either civil or military, or partly one and partly the other. In every case the source from which it derives its authority is the same, viz., the customs of war, and not any municipal law, and the general enforcing the rule is responsible only to his own government, and not to the invaded people.

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—
military
occupation.

46. The rule of military occupation has relation only to the inhabitants of the invaded country; the troops and camp-followers in a foreign country occupied by an English army remain under English military law, and are in no respects amenable to the rule of military occupation. As a general rule, the rule of military occupation extends only to such matters as concern the safety of the army, the invader permitting the ordinary civil tribunals of the country to deal with ordinary crimes committed by the inhabitants. The course, however, to be adopted in such cases is at the discretion of the invader. He may abrogate any law of the country and substitute other rules. He may create special tribunals, or leave the native tribunals to exercise their usual jurisdiction.

Extent of
rule.

47. The special tribunals created by an invader for carrying into effect the rule of military occupation in the case of individual offenders are usually military courts framed on the model and carrying on their proceedings after the manner of courts-martial. Technically, however, courts so established by an English general would not be courts-martial within the meaning of the Army Act, but courts established and regulated only by the will of the general.

Tribunals.

48. The most important power exercised by the invader occupying a territory is that of punishing in such manner as he thinks expedient, inhabitants guilty of breaking the rules laid down by him for securing the safety of the army. The right to inflict such punishment in case of necessity is undoubted; but the interest of the invader, no less than the dictates of humanity, demand that inhabitants who have been guilty of an act which is only a crime in consequence of its being injurious to an enemy, should be treated with the greatest leniency consistent with the safety and well-being of the invading army (a).

Punish-
ment of
breach of
rule of mili-
tary occupa-
tion.

(a) Rule 5 of the Instructions for the government of Armies of the United States in the Field is as follows:—"Martial law" (by which is meant the law of military occupation) "should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to

49. In conclusion, it must be borne in mind that the invader cannot according to the customs of war call on the inhabitants to enlist as soldiers or to engage actively in military operations against their own country.

(vii). *Intercourse between Enemies during War (a).*

50. The state of war is brought to an end by a treaty of peace or a general truce. A treaty of peace puts an end to the war, and absolutely abolishes the subject of it. A general truce puts an end to the war, but leaves undecided the question which gave occasion for the war. In modern times, general truces have fallen out of use. In the middle ages they were common, especially between the Turks and their Christian foes, the religion of neither party permitting the combatants to conclude a definite treaty of peace. Treaties and general truces can only be concluded by the sovereign power of the State, and do not fall within the scope of the present work (b).

51. During the continuance of war, the belligerents often have occasion to suspend for a limited time the active operations of war within the whole or a part of the theatre of war. A military compact of this description is called a suspension of arms, an armistice, or a partial truce. The same principles are applicable to such arrangements under whatever name they pass, and it will be convenient to use the expression "armistice" to designate any agreement for the suspension of hostilities short of a general truce or a treaty (c).

52. A power to conclude an armistice is essential to the fulfilment by a commanding officer of his official duties, and therefore he is presumed to have had such a power delegated to him by the sovereign without any special command. This presumption of authority is so strong, that it cannot be rebutted by any act of the sovereign. If an officer makes an armistice in disobedience to orders received from his sovereign, he is punishable by his sovereign; but the sovereign is bound by the armistice, inasmuch as the enemy cannot be supposed to have known of the limitation of authority imposed on the officer.

53. On the other hand, this implied authority extends only to the necessities of war. A commanding officer cannot agree for the delivery up of the sovereignty over a

face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion. To save the country is paramount to all other considerations." Halleck, ii. 36.

(a) Vattel, ii. c. 16, pp. 255-273; Heffter, 269-274; Phillimore, ii. c. 8 pp. 146-200; Halleck, ii. c. 29, pp. 340-363.

(b) Kent, i. 167; Vattel, ii. 255-256.

(c) Vattel, ii. 256; Instructions for United States Armies, sect. viii.; Halleck, ii. 48-9. See Forms of Armistice in Part III, below, p. 887.

territory, or stipulate for any permanent rights to be conferred on the inhabitants of a country. Such powers are not necessary for the success of the operation of war, and, therefore, are not within the limits of an implied authority (a). Ch. XIV.
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54. An armistice binds the contracting authorities from the date at which it is concluded. It must, however, be published in all the places to which it relates for the purpose of controlling the acts of individuals, as nobody can be bound to obey a law of which he is ignorant. Suppose, therefore, an armistice to be made extending over a considerable tract of country, and an officer, ignorant of the circumstance of its having been made, to commit an act of hostility by capturing a town or taking prisoners, the officer is not punishable for the capture of the town or prisoners, but the State to which he belongs is bound to restore them. To prevent such occurrences, it is customary to declare the times at which the armistice is to commence in distant places, in order that no infraction of it may take place through ignorance (b). Armistice binding only on those acquainted with its provisions.

55. The first question to be attended to is the time of the commencement and the time of the termination of an armistice. Supposing it to be made for a certain number of days, *e.g.*, from the 1st of May to the 1st of August, questions have been raised whether the days named are both included or excluded. The usual mode of reckoning time in England in legal documents is to include the first day and exclude the last. Consequently in the above mentioned case, according to English law, the truce begins at the moment on which the 30th of April ends, and ceases at the moment at which the 31st day of July ends. To avoid difficulties it should be stated from the 1st of May inclusive to the 1st of August exclusive, or the 1st of August inclusive if it is intended to include the 1st of August; or better still, to begin at a certain hour on one day, and end at a certain hour on another day. In the case of a short armistice the number of hours should be stated, and it is advisable in all cases when an armistice has been arranged to agree to indicate by some signal, for example, hoisting a flag or firing a cannon, both the commencement and the termination of the armistice (c). Commencement and close of armistice.

56. An armistice is only a qualified peace, and the state of war continues though active hostilities are suspended. This somewhat anomalous state of things leads, in the absence of express stipulation, to considerable difficulty in ascertaining what is allowed or forbidden to be done during its continuance by the belligerents. The general Acts permitted and forbidden during armistice.

(a) Vattel, ii. 256-7; Halleck, ii. 343.

(b) Vattel, ii. 258; Halleck, ii. 344.

(c) Vattel, ii. 261; Halleck, i. 346.

le seems to be that a belligerent cannot take advantage an armistice to do any aggressive act which, but for e armistice, he could not have done without danger to mself. For example, in the case of an armistice between besieging army and a besieged town, the besiegers must t continue their works against the town, and the sieged are forbidden to repair their walls, raise fresh rtifications, or introduce succours or reinforcements into e town (a).

57. Vattel draws a distinction between acts done during armistice in places subject to the fire of the enemy, and ts done in places which are not subject to the interrup- n of the enemy. For example, in the case of an armistice r the burial of the dead, he admits that it is unlawful for ops to escape by roads subject to the fire of the enemy. r the other hand, he permits either of the belligerents to ke advantage of the armistice to withdraw any portion of eir troops beyond the fire of the enemy, or to bring up ops from the rear, or otherwise to strengthen his posi- on in places beyond the observation of the enemy. Simi- ly, in the case of an armistice between a besieging army d a besieged town, he asserts that the governor, although may not commit any acts of hostility in the immediate ighbourhood of the enemy, may continue works in the terior of the town which is not exposed to his fire, and ay remove ruins or otherwise add to the defence of the wn in places remote from the enemy's forces. His argu- ent is that to prevent such advantages being taken, ecial stipulations should have been inserted, as the arm- ice itself extends only to the prevention of operations bject to the immediate interruption of the enemy (b).

58. In recent times opposite views have been taken by riters on the customs of war in relation to the duties of lligerents during an armistice, it being held on the one le that all equivocal acts of hostility should be abstained om, whether coming or not within the description of ts capable of being interrupted by the enemy ; while on e other it is contended that, according to the practice of dern warfare, belligerents have a perfect right to alter e dispositions of their troops, construct entrenchments, pair breaches, and do any other acts they may think fit prepare themselves for the resumption of hostilities. A lation of an armistice by either of the contending rties gives to the other the right of determining it, but violation by private individuals only affords the right demanding the punishment of the guilty persons (c). e question is so difficult that the greatest caution ould be observed in the case of an armistice to specify

(a) Vattel, ii. 283; Halleck, ii. 345; Phillimore, iii. 166.

(b) Vattel, ii. 285; Halleck, ii. 345.

(c) Phillimore, iii. 167.

the acts which are or are not to be permitted during its continuance. **Ch. XIV.**

59. A capitulation is an agreement for the delivery of a besieged place, or force defeated in the field, into the hands of the enemy. The commanders on either side are invested with powers to agree to the terms of a capitulation, inasmuch as the possession of such powers is necessary to the proper exercise of their functions. Definition of capitulation.

60. On the other hand, the extent of their powers is limited by the necessity for their exercise. In the surrender of a place the questions at issue are the immediate possession of the place itself and the fate of the garrison. The capitulation, therefore, must be limited to these questions. It may declare that the garrison is to surrender unconditionally as prisoners of war, or to be entitled to march out with all the honours of war. It may also provide that the soldiers composing the garrison are not to serve again during the war. Further conditions for the protection of the inhabitants and of their privileges, and for their immunity from pillage or contributions, may fairly be inserted in a capitulation. But stipulations in a capitulation to the effect that the garrison should never again bear arms against the forces of the conquering State, or that the sovereignty of the town should change hands, would be invalid, inasmuch as powers for such extensive purpose belong only to the sovereign power of the State, and cannot ever be presumed to be delegated to inferior officers (*a*). Restrictions on power of commanding officer as to capitulation.

61. A flag of truce can only be used legitimately for the purpose of entering into some arrangement with the enemy. If adopted with a view to obtain surreptitiously information of the enemy's forces or position, it loses its character of a flag of truce, and exposes its bearer to the punishment of a spy. Great caution, however, and the most conclusive evidence is necessary before the bearer of a flag of truce can be convicted as a spy. Legitimate use of flag of truce.

62. The bearer of a flag of truce cannot insist on being admitted, and should not be allowed without permission to approach sufficiently near to acquire any useful information. When an army is in position, the bearer of a flag of truce should not, without leave, be permitted to pass the outer line of sentinels, or even to approach within the range of their guns. When a flag of truce is sent from a detachment during an engagement, the troops from which it is sent should halt and cease firing. The troops to which it is sent should, if they are willing to receive it, signal to that effect, and also cease firing, but it must be understood that firing during an engagement does not Status bearer flag of truce.

Ch. XIV. necessarily cease on the appearance of a flag of truce and that the parties connected with such flag cannot complain if its bearers are killed by such firing. When it is intended to refuse admission to a flag of truce, the bearer should, as soon as possible, be signalled to retire, and if he do not obey the signal he may be fired upon (a).

Definition of cartel.

63. A cartel is an agreement for the exchange of prisoners of war. A cartel ship is a ship commissioned for the exchange of prisoners. She is considered a neutral ship, and must not engage in any hostilities or carry implements of war, except a signal gun (b).

Definition of safe conduct or passport. Effect of safeconduct for person.

64. A safe conduct or passport is a document given by a commander of belligerent forces enabling certain persons to pass, either alone or with servants and effects, within the limits occupied by the forces of such commanding officer. The expression "passport" is usually applied to persons, a safe conduct to both persons and things. A safe conduct for a person is not transferable, and is determinable at the date stated for its determination, unless the bearer is detained by sickness or other unavoidable cause, in which case it terminates on the cessation of the cause. A safe conduct may be revoked if it is injurious to the State, *e.g.*, an officer preparing for a secret expedition may revoke the safe conduct of a person who would by means of such safe conduct be enabled to carry information to the enemy. In such case, however, he must give time and opportunity to the bearer to withdraw in safety.

Effect of safeconduct for goods.

65. A safe conduct for goods admits of their being removed by some person other than the owner, unless there is some specific objection against the person employed (c).

Explanation of safeguard.

66. A safeguard is a guard posted by a commanding officer for the purpose of protecting property or persons against the operations of his own troops (d.) To force such a guard is by English law a military offence of the gravest character, and is punishable with death under s. 6 of the Army Act.

(a) Halleck, ii. 361; Instructions for United State Armies, sec. vi.

(b) Vattel, ii. 182; Halleck, ii. 354; Phillimore, iii. 161.

(c) Vattel, ii. 273, 278; Halleck, ii. 351; Phillimore, iii. 147.

(d) This is the sense given to a safeguard [by Vattel, ii. 200. It is also obviously the sense in which the word is used in the Army Act, sec. 6, and in the previous Mutiny Acts, from which the expression is borrowed. Hough, Mil. Prec., p. 184. The Duke of Wellington, in an order quoted by Simmons on Courts-Martial, 7th ed., p. 94, says: "The commander of the forces requests the general officer commanding divisions will place safeguards in the villages in the neighbourhood of their encampments, to prevent the soldiers from carrying off the furniture, poles of the vines, and other property of the inhabitants. The Commander of the Forces desires that at the same time with this order the Articles of War regarding the forcing of safeguards may be read to the troops."

On the other hand, "safeguard" is explained by Halleck, ii. 353, to include a written document or protection which may be delivered to the party whose person or property is to be protected, or may be posted on the property itself, as upon a church or other public building.

PART II.

THE ARMY ACT.

AN Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same. [44 & 45 Vict., c. 58.]



THE ARMY ACT OF 1881.

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PART VI.

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SCHEDULES.

THE ARMY ACT.

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the same. §s. 1-3.
 (a).

[44 & 45 Vict., c. 58.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited for all purposes as the Army Short title of Act.
 Act.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force, or continuing the same. Mode of bringing Act into force.

For explanation of the reasons for bringing this Act into force annually by a separate Act, see Chapter II, page 13, note (f) ; and para. 35.

3. This Act is divided into five parts, relating to the following subject-matter ; that is to say, Division of Act.

Part I, discipline :

Part II, enlistment :

Part III, billeting and impressment of carriages :

Part IV, general provisions :

Part V, application of military law, saving provisions, and definitions.

(a) The Act is printed with the amendments introduced by the Army (Annual) Act, 1882, and the subsequent Annual Acts down to and inclusive of the Act of 1894, in accordance with the directions of 48 & 49 Vict., c. 8.

PART I.

DISCIPLINE.

CRIMES AND PUNISHMENTS.

Offences in respect of Military Service.

Part I.

s. 4.

Offences in
relation to
the enemy
punishable
with death

4. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend ; or
- (2.) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy ; or
- (3.) Treacherously holds correspondence with or gives intelligence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy ; or
- (4.) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner ; or
- (5.) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy ; or
- (6.) Knowingly does when on active service any act calculated to imperil the success of Her Majesty's forces or any part thereof ; or
- (7.) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice, shall on conviction by court-martial be liable to suffer

death, or such less punishment as is in this Act mentioned.

Subject to military law.—This includes not only officers and soldiers, but also camp followers, sutlers, &c. See ss. 175, 176, and as to natives of India, s. 180.

Sub-section (1). *Shamefully abandons, &c.* This offence can only be committed by the person in charge of the garrison, post, &c., and not by the subordinate under his command. The surrender of a place by an officer charged with its defence can only be justified by the utmost necessity, such as want of provisions or water, the absence of hope of relief, and the certainty or extreme probability that no further efforts could prevent the place with its garrison, their arms and magazines, falling into the hands of the enemy. Unless the necessity is shown, the conclusion must be that the surrender or abandonment was shameful, and therefore a crime under this section. The word *post* includes any point or position (whether fortified or not) which a detachment may be ordered to hold; and the abandonment of a post would also include the abandonment of a siege if there were no circumstances to warrant such a measure. It has not the same meaning as in s. 6 (1), where it applies to an individual.

A charge under the first part of this sub-section must detail some circumstances which make the abandonment in a military sense shameful.

Sub-section (2). *Shamefully casts away.* The charge must show the circumstances which make the act in a military sense shameful. The word “shamefully” is held to mean by a positive and disgraceful dereliction of duty, and not merely through negligence or misapprehension or error of judgment.

Sub-section (3). *Treacherously.* The charge must show the circumstances which indicate the treachery or cowardice. If there is no treachery or cowardice, the charge should be laid under section 5 (4).

Sub-section (4). *Supplies.* This would include the taking any steps to restore a supply of water cut off by our forces.

Knowingly. Evidence should if possible be given that the prisoner knew the person harboured or protected to be an enemy; but if the fact of the harbouring or protecting is proved, the court may infer knowledge from the circumstances. The same observation applies to “voluntarily” in (5) and to “knowingly” in (6).

Sub-section (6). For definition of active service, see s. 189.

Sub-section (7). This sub-section is confined to acts, words, neglect, or omissions which show cowardice, and the charge must be framed accordingly. Drunkenness or treachery (unaccom-

(M.L.)

Part I. panied by cowardice) cannot be dealt with under this sub-section.

ss. 4-5.

Misbehaves.—This means that the accused, from an unsoldierlike regard for his personal safety in the presence of the enemy, failed in respect of some distinct and feasible duty imposed upon him by a specified order or regulation, or by the well understood custom of the service, or by the requirements of the case, as applicable to the position in which he was placed at the time.

Offences in relation to the enemy not punishable with death.

5. Every person subject to military law who on active service commits any of the following offences; that is to say,

- (1.) Without orders from his superior officer leaves the ranks, in order to secure prisoners or horses, or on pretence of taking wounded men to the rear; or
- (2.) Without orders from his superior officer wilfully destroys or damages any property; or
- (3.) Is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner fails to rejoin Her Majesty's service when able to rejoin the same; or
- (4.) Without due authority either holds correspondence with, or gives intelligence to, or sends a flag of truce to the enemy; or
- (5.) By word of mouth or in writing, or by signals, or otherwise, spreads reports calculated to create unnecessary alarm or despondency; or
- (6.) In action, or previously to going into action, uses words calculated to create alarm or despondency, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

Sub-section (4). *Without due authority.* If *prima facie* a want of authority is shown, it will rest with the prisoner to show that he had authority, but any evidence of his having had authority which is known to the prosecutor should be adduced by the prosecutor. See rule 60 (A), and note. The terms of this sub-section include any unauthorised communication of intelligence to the enemy even by indirect methods, such as sending letters or

sketches, or plans, to friends or newspapers. As to injurious disclosures not on active service, see s. 36.

Every one present with an army should bear in mind that the publication of letters from the army containing facts and opinions, often entirely erroneous, relating to the operations or prospects of the campaign, can scarcely fail to have mischievous results: and it is well known that both during the Peninsular and Crimean wars, the enemy were indebted for information to English newspapers. See G.O. of Duke of Wellington, dated Celorico, 10 Aug., 1810, quoted in Simmons on Courts-Martial, p. 67.

Sub-section (5). The charge must detail the reports alleged to have been spread, and should indicate how they were calculated to create unnecessary alarm or despondency. A similar remark applies to a charge under (6). It is not necessary to aver or prove that the reports were false,—indeed the truth may increase the offence;—nor is it necessary to show that any effect was actually produced by the reports spread or words used: it could however seldom be expedient to try an officer or soldier under this section for expressions which could not be shown to have had some effect. The offence under sub-section (5) may be committed either with reference to the troops with whom the offender is serving, or with reference to the inhabitants of the country.

6. (1.) Every person subject to military law who commits any of the following offences, that is to say,

Offences punishable more severely on active service than at other times.

- (a.) Leaves his commanding officer to go in search of plunder; or
- (b.) Without orders from his superior officer, leaves his guard, picquet, patrol, or post; or
- (c.) Forces a safeguard; or
- (d.) Forces or strikes a soldier when acting as sentinel; or
- (e.) Impedes the provost-marshal, or any assistant provost-marshal, or any officer or non-commissioned officer, or other person legally exercising authority under or on behalf of the provost-marshal, or, when called on, refuses to assist in the execution of his duty the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer, or other person; or
- (f.) Does violence to any person bringing provisions or

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z 2

Part I.

s. 6.

supplies to the forces ; or commits any offence against the property or person of any inhabitant of or resident in the country in which he is serving ; or

(g.) Breaks into any house or other place in search of plunder ; or

(h.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, intentionally occasions false alarms in action, on the march, in the field, or elsewhere ; or

(i.) Treacherously makes known the parole, watchword, or countersign, to any person not entitled to receive it, or treacherously gives a parole, watchword, or countersign different from what he received ; or

(j.) Irregularly detains or appropriates to his own corps, battalion, or detachment any provisions or supplies proceeding to the forces, contrary to any orders issued in that respect ; or

Misbehaviour of
sentinel.

(k.) Being a soldier acting as sentinel, commits any of the following offences ; that is to say,

(i) sleeps or is drunk on his post ; or

(ii) leaves his post before he is regularly relieved,

shall, on conviction by court-martial,

if he commits any such offence on active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he commits any such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(2.) Every person subject to military law who commits any of the following offences ; (that is to say,)

- (a.) By discharging firearms, drawing swords, beating drums, making signals, using words, or by any means whatever, negligently occasions false alarms in action, on the march, in the field, or elsewhere ; or
- (b.) Makes known the parole, watchword, or countersign to any person not entitled to receive it ; or, without good and sufficient cause, gives a parole, watchword or countersign different from what he received,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The punishment for the offences mentioned in sub-section (1) of this section differ very widely according as they are committed on active service or not on active service ; and where a man is charged with committing any of them on active service, those words must always be inserted in the charge. For the definition of active service see section 189.

(b.) *Post.* As used with respect to an individual this word refers to the position or place which it may be the duty of an officer or soldier to be in, especially when under arms : and with respect in particular to a sentry, it applies to the spot where the sentry is left to the observance of his duties by the officer or non-commissioned officer posting him ; or to any limits specially pointed out as his walk. In determining what, in any particular case, is a post, the court will use their military knowledge. See Q.R., sect. VI, para. 82 (as to gate-duty), and note to (k) below.

(c.) *Safeguard.* A safeguard is a party of soldiers detached for the protection of some person or persons, or of a particular village, mansion, or other property. A single sentry posted from such party is still part of the safeguard, and it is as criminal to force him by breaking into the house, cellar, or other property under his especial care as to force the whole party. See Chapter XIV, para. 66 and note.

(e.) The court may exercise their military knowledge as to a person being a provost-marshal, assistant provost-marshal, or a person legally exercising authority under or on behalf of the provost-marshal ; but it will be open to the accused to show that

Part I.

s. 6.

the person he is charged with impeding was not properly appointed provost-marshal or assistant provost-marshal, or was not legally exercising the above-mentioned authority.

(f.) It is frequently of the highest importance to conciliate the inhabitants of the country where the troops happen to be, and to induce them to bring provisions and supplies. In this point of view an offence which in other circumstances would be trivial, may require exemplary punishment. For instance, if a trifling theft has the effect of disturbing the confidence of the inhabitants and endangering the supplies of the army, the offence deserves very severe punishment. As an offence under the sub-section will really be a civil offence when not committed on active service, a person should not be charged under this sub-section when the offence is committed in the United Kingdom or in any other place where there is a civil court competent conveniently to deal with the case. On the other hand, on active service, offences which, if committed in the United Kingdom, would be tried by a civil court, may be better tried under this enactment. For instance, a sutler accused of rape committed on an inhabitant of the country might properly be tried under it. The charge must set out the specific acts of violence or the specific offence alleged to have been done or committed.

(g.) The house or other place should be specified in the charge.

(h.) The charge must set out exactly the signal made or the words used. If means are used other than words they must be specified briefly in the particulars of the charges; and the same remark applies to the statement of the "elsewhere."

Intentionally. See note to s. 4 (4), as to "knowingly," and Chapter VII, para. 41.

(i.) Although treachery must be averred in a charge under this sub-section, and want of good and sufficient cause in a charge under sub-section 2 (b), the charge need not detail the circumstances of the treachery or of the absence of good and sufficient cause. Upon proof that the accused made known the watchword to a person not entitled to receive it, or gave a watchword different from what he received, the court will be at liberty to infer the treachery or the absence of good and sufficient cause, unless the accused can show that he acted from good cause and not treacherously. The charge must aver or show that the person was not entitled to receive the watchword.

Watchword will include any authorised pass-word not being parole or countersign which might, for example, be adopted for a particular emergency.

(j.) The charge must show how the act charged was irregular and contrary to orders.

(k.) *Post.* See note to (1) (b) above. The fact of a sentry not being regularly posted is immaterial. A soldier is liable, if being one of the guard or body furnishing the sentry for the post, he has undertaken the duty of sentry, even though not posted in the regular way by a non-commissioned officer. A sentry found drunk a short distance from his post should be charged with leaving his post: he cannot properly be charged with being drunk on his post, though he may be charged with drunkenness on duty. As to "stablemen," see Q.R., Sect. VI, para. 83.

(2.) (a.) See note to (1) (h) above. This sub-section applies only to false alarms among the troops.

(b.) See note to (1) (i) above.

Part I.
ss. 6-7.

Mutiny and Insubordination.

7. Every person subject to military law who commits **Mutiny and sedition.** any of the following offences ; that is to say,

- (1.) Causes or conspires with any other persons to cause any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (2.) Endeavours to seduce any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, from allegiance to Her Majesty, or to persuade any person in Her Majesty's regular, reserve, or auxiliary forces, or Navy, to join in any mutiny or sedition ; or
- (3.) Joins in, or being present does not use his utmost endeavours to suppress any mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy ; or
- (4.) Coming to the knowledge of any actual or intended mutiny or sedition in any forces belonging to Her Majesty's regular, reserve, or auxiliary forces, or Navy, does not without delay inform his commanding officer of the same,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned.

Part I. Sub-section (1). *Mutiny or sedition.* See as to these offences, Chapter III, paras. 4-6. A man might be tried under this sub-section for conspiring to cause a mutiny though the conspiracy proved abortive, and no mutiny took place.

ss. 7-8.

Sub-section (2). Civilians who endeavour to seduce any person serving in Her Majesty's forces by sea or land from allegiance to Her Majesty, or to incite any such person to commit any traitorous practice whatsoever, are liable on conviction by a civil court to penal servitude for life under 37 Geo. III, c. 70, as amended by 7 Will. IV and 1 Vict. c. 91.

Sub-section (3). *Being present.* Doubts might well arise whether men present when a mutiny was being contrived or had actually begun were actually joining it or not. This sub-section provides that if they are present and do not use their utmost endeavours to suppress it, they will be equally guilty as if they took that active part which constitutes joining in a mutiny. Consequently, men present on parade, or present accidentally, or induced by false pretences to attend a meeting where a mutiny is begun or contrived, will be guilty of an offence under this sub-section although they took no active part, and therefore can hardly be said to have joined in the mutiny. If a doubt exists as to whether any individual did or did not take such an active part as to have joined in the mutiny, he may be charged in alternative charges under sub-section (1) and this sub-section.

Each one of a body of men not marching, or not coming from their barrack room when duly ordered, is guilty of mutiny, if he cannot show that his disobedience was occasioned solely by reason of compulsion.

Utmost endeavours. This does not necessarily mean the utmost of which a man is capable, but such endeavours as a man might be reasonably and fairly expected to make.

(4.) *Commanding officer.* This expression will include any person having a military command over the person who has knowledge of the mutiny or sedition, and is not limited by Rule 128. A private soldier, for example, would properly inform his serjeant, and information so given would be held to be given to his commanding officer within the meaning of the section.

Striking or threatening superior officer.

8. (1.) Every person subject to military law who commits any of the following offences; that is to say,

1. Strikes or uses or offers any violence to his superior officer, being in the execution of his office, shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned; and

(2.) Every person subject to military law who commits any of the following offences ; that is to say, Part I.
s. 8.

Strikes or uses or offers any violence to his superior officer, or uses threatening or insubordinate language to his superior officer,
shall on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(1.) *In the execution of his office.* It is difficult accurately to define these words, but the military knowledge and experience of the members of a court-martial will enable them in most instances readily to determine whether the superior is or is not in the execution of his office. An officer in plain clothes may undoubtedly be in the execution of his office ; but where the officer is in plain clothes, it becomes necessary to prove some knowledge on the part of the soldier at the time of offering the violence that the person assaulted was an officer, which is not the case where the officer is in uniform. On the other hand, there may be circumstances in which an officer in uniform is not in the execution of his office. A corporal asleep in the barrack room of which he was in charge would probably be held to be within the protection of this section.

An officer or non-commissioned officer in quarters is in the execution of his office.

A serjeant out of barracks ordering a disorderly soldier to return to barracks is in the execution of his office.

Offers any violence. These words include any defiant gesture or act which if completed would end in actual violence, but do not extend to an insulting or impertinent gesture or act from which violence could not result. For example, a soldier throwing down his arms or his accoutrements on parade, or throwing away his cap or belt in an impertinent manner, but in such a direction that they could not strike a superior, could not be deemed to offer violence within the meaning of this enactment. So also a man shaking his fist, or even drawing a bayonet, or otherwise making a show of violence against a superior behind the bars of a cell or at

Part I.

s. 8.

such a distance that striking him was at the moment impossible, is not guilty of offering violence. On the other hand, throwing a missile, or pointing a loaded firearm at a superior would come within the section.

If the violence be used in self-defence, for instance, if it be shown that it was necessary, or that at the moment the prisoner had reason to believe it was necessary for his actual protection from injury, and that he used no more violence than was reasonably necessary for this purpose, he is legally justified in using it, and commits no offence.

Provocation is not a ground of acquittal, but tends to mitigate the punishment; evidence of provocation, if tendered, must therefore be admitted in order to render the sentence valid.

(2.) *Threatening or insubordinate language.* Where the charge is for threatening or insubordinate language the particulars of the charge must state the expressions or their substance, and the superior to whom they were addressed.

Expressions used merely for exculpation would not be punishable under this section. It has been ruled that "expressions, however offensive to a superior, that are used (1) in the course of a judicial inquiry, (2) by a party to that inquiry, and (3) upon a matter pertinent to and *bona fide* for the purposes of that inquiry, as, for instance, the credibility of a witness, are privileged, and cannot be made the subject of a criminal charge."

Expressions used of a superior officer and not within his hearing, or which cannot be proved to be used to a superior officer, must be charged as an offence under s. 40, and not under this section. But insubordinate or threatening language regarding one superior if used to (in the sense that it should be heard by) another superior, is an offence under this section.

The words must be used with an insubordinate intent, that is to say, they must be, either in themselves or in the manner or circumstances in which they are spoken, insulting or disrespectful, and in all cases it must reasonably appear that they were intended to be heard by a superior.

As to the use of coarse and abusive language by a man when drunk, see Chapter III, paras. 30, 31; and for general observations on insubordinate language, see Chapter V, para. 86.

Improper language not amounting to insubordinate language, or which cannot be proved to be used to a superior officer, must be charged under s. 40.

As to active service see the beginning of note to section 6.

Superior officer. The court should be satisfied, before conviction, that the prisoner knew the person struck to be a superior officer. If the superior did not wear the insignia of his rank, and was not personally known to the prisoner, evidence would be necessary to

show that the prisoner was otherwise aware of his being of superior rank, the intention being of the essence of the offence.

A charge alleging that a prisoner "attempted to strike" or "struck at" a superior officer, though objectionable as not following the words of the Act, has been held good.

A lance-corporal while acting as orderly sergeant is the superior of all other lance-corporals. A private soldier while placed temporarily in command of a guard is, for the time being, the "superior officer" of the other private soldiers over whom he is placed.

See generally as to offences against superiors, Q.R., Sect. VI, para. 77.

Part I.

ss. 8-9.

9. (1.) Every person subject to military law who commits the following offence ; that is to say,

Disobedience to superior officer.

Disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office, whether the same is given orally, or in writing, or by signal, or otherwise,

shall on conviction by court-martial be liable to suffer death, or such less punishment as is in this Act mentioned ; and

(2.) Every person subject to military law who commits the following offence ; that is to say,

Disobeys any lawful command given by his superior officer, shall, on conviction by court-martial,

if he commits such offence on active service, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned ; and

if he commits such offence not on active service, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(1.) *Disobeys in such manner . . . any lawful command.* The charge must specify the command, and that it was given personally, and must show the manner in which the disobedience showed a wilful defiance of authority ; see Chapter III, paras. 8-10. The particulars should also show how the officer was in the execution

Part I of his office (see note s. 8), but the court may make use of
ss. 9-10. their military knowledge for determining whether the officer was in the execution of his office, and whether he was a superior officer.

The command must be one relating to military duty, that is to say, the disobedience of it must tend to impede, delay, or prevent a military proceeding. Thus a command given by an officer to his soldier-servant to perform some domestic office not relating to military duty is not a command within the meaning of this section. A soldier who refuses to take a letter relating to private theatricals upon the order of a non-commissioned officer does not disobey a lawful command.

Religious scruples furnish no excuse for disobedience.

The disobedience must be immediate or proximate to the command, and actual non-compliance must be proved. A man who says "I will not do it," does not necessarily disobey. A man who when ordered to do a duty at a future time says "I will not do it," does not thereby commit an offence under this section, though he may be liable under s. 8 (2). See Chapter III, para. 9.

(2.) *Disobeying lawful command.* To establish an offence under (2) it is not requisite to prove that the command was given personally by a superior. It is sufficient to show that it was given by the deputy or agent of a superior, whom according to the usages of the service or for other reasons the prisoner might reasonably suppose to have been duly authorised to notify to him the command of his superior. But it must be a specific command to an individual, and must be given as being the command of a superior.

An omission arising from misapprehension or forgetfulness is not an offence under this section. The act of a soldier who declines to sign his accounts upon the ground that they are incorrect is not an offence under this section.

If obedience to the command were physically impossible, the failure to obey would not be an offence under this section.

As to active service, see Chapter III, para. 33, and note to s. 6.

As to disobedience of general or garrison orders, see s. 11.

Insubordination.

10. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Being concerned in any quarrel, fray, or disorder, refuses to obey any officer (though of inferior rank) who orders him into arrest, or strikes or uses or offers violence to any such officer; or
- (2.) Strikes or uses or offers violence to any person,

whether subject to military law or not, in whose custody he is placed, and whether he is or is not his superior officer ; or

- (3.) Resists an escort whose duty it is to apprehend him or to have him in charge ; or
- (4.) Being a soldier breaks out of barracks, camp, or quarters,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). A person may be charged under this sub-section whether the officer who ordered him into arrest was of inferior or superior rank, but where the officer was of superior rank, the offender may be charged also under s. 9. Only officers should be charged under this sub-section.

Sub-section (2). It will be observed that a charge may be made under this sub-section for assaulting a civilian policeman.

Sub-section (3). The court will use their military knowledge to determine whether it was the duty of the escort to apprehend the prisoner or to have him in charge.

Under this sub-section the resistance may be passive. A man lying down and refusing to move, if physically able to move, resists.

Sub-section (4). *Breaks out of barracks, &c.* This offence consists in a soldier quitting barracks, &c., at a time when he had no right to do so, either because he was on duty or under punishment, or because of some regulation or order ; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. The mode in which the act was effected will, however, assist a commanding officer in determining whether to deal with it as a mere breach of discipline under this sub-section, or to reserve it for trial as amounting to desertion. The particulars of the charge must show that the absence from barracks, &c., was without permission, or otherwise unlawful.

If the charge be for breaking out of barracks, it must be proved that the prisoner left the confines of the barracks as charged, and so also if the charge is for breaking out of camp. A charge of breaking out of quarters would hold good in the case of a man improperly leaving one part of a barrack for another, where he had no right to be.

Part I 11. Every person subject to military law who commits the following offence ; that is to say,

ss. 11-12.
Neglect to
obey garrison or other
orders.

Neglects to obey any general or garrison or other orders, shall, on conviction by court-martial, be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Provided that the expression "general orders" in this section shall not include Her Majesty's regulations and orders for the army, or any similar order in the nature of a regulation published for the general information and guidance of the army.

The orders specified in this section are standing orders or orders having a continuous operation, whether garrison or regimental, or of a like nature. Disobedience of a specific order in the nature of a command should be dealt with under s. 9, and non-compliance through forgetfulness or negligence with an order to do some specific act at a future time under s. 40.

Ignorance of the order is not an exculpation if the order is one which the prisoner ought in the ordinary course to know. But a misapprehension reasonably arising from want of clearness in the order is a ground for exculpation. The existence of the orders and the fact of the neglect must be proved. Disobedience of a Q.R. may be punished under s. 40, but if a Q.R. is published as a regimental order, it acquires also the character of a regimental order, and disobedience to it may be punished accordingly.

The offence of concealment of venereal disease is to be dealt with under this section. Q.R., Sect. VI, para. 55.

Desertion, Fraudulent Enlistment, and Absence without Leave.

Desertion.

12. (1.) Every person subject to military law who commits any of the following offences ; that is to say

(a.) Deserts or attempts to desert Her Majesty's service ; or

(b.) Persuades, endeavours to persuade, procures or attempts to procure any person subject to military law to desert from Her Majesty's service, shall, on conviction by court-martial,

if he committed such offence when on active service or under orders for active service, be liable to suffer death, or such less punishment as is in this Act mentioned ; and

if he committed such offence under any other circumstances, be liable for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned : and for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) Where an offender has fraudulently enlisted once or oftener, he may for the purposes of trial for the offence of deserting or attempting to desert Her Majesty's service be deemed to belong to any one or more of the corps to which he has been appointed or transferred as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(3.) For the purposes of the liability under this section to the higher punishment for a second offence, a previous offence of fraudulent enlistment may be reckoned as a previous offence under this section.

See Chapter III, paras. 13-20; Q.R., Sect. VI, paras. 133-164.

On active service. See beginning of note to s. 6.

The offence of fraudulent enlistment is dealt with in s. 13. A to a false statement by a soldier to his commanding officer that he has been guilty of desertion or fraudulent enlistment, see s. 27 (3)

For provisions as to inquiry into absence and confession of desertion or fraudulent enlistment, see ss. 72, 73 ; and as to liability to general service or transfer on conviction for, or confession of, desertion or fraudulent enlistment, see s. 83 (7) ; and

Part I. as to liability to transfer of soldier delivered into military custody or committed by a court of summary jurisdiction as a deserter, see s. 83 (8); and as to descriptive reports of deserters, escorts, and generally Q.R., Sect. VI, paras. 133-164. A person charged with desertion may, under s. 56 (3), be found guilty of attempting to desert, or of being absent without leave.

s. 12.

If a prisoner is tried for two offences of desertion by the same court-martial, the charges should be in separate charge sheets and the trials distinct; but if convicted on both charges he can be awarded the higher punishment allowed for a second offence. So also if he is tried for fraudulent enlistment and desertion, the two offences must be included in separate charge sheets, but if he is convicted of both by the same court, he may be awarded the higher punishment.

The case is similar where the charge is of fraudulent enlistment under s. 13; but in that case, if he has deserted first, and fraudulently enlisted afterwards, he cannot be awarded the higher punishment unless he has served between the date of the desertion and the date of the fraudulent enlistment. See s. 13 (2) (3).

For example, if a soldier deserted on the 1st of October, 1890, and was apprehended, convicted, and punished, and having undergone his punishment, returns to the ranks, and on the 10th of March, 1893, fraudulently enlists, then, on conviction for such fraudulent enlistment, he can be sentenced to penal servitude, just as if the former conviction for desertion had been a conviction for fraudulent enlistment.

If, however, a soldier thus deserts on the 5th of January, 1893, and is not apprehended, and on the 15th of February, while still in a state of desertion, fraudulently enlists, then, although he may be convicted both of the desertion and of the fraudulent enlistment, he cannot be sentenced to penal servitude for the fraudulent enlistment, as the desertion was his absence "next before the fraudulent enlistment" and the exception in s. 13 (3) applies.

Where the desertion and fraudulent enlistment form in effect one transaction, the man should not as a rule be tried for both offences.

Any person who falsely represents himself to any authority to be a deserter may be punished by a civil court of summary jurisdiction by three months' imprisonment (s. 152); see also as to punishment by a like court of persons inducing soldiers to desert, s. 153; and as to the apprehension of deserters, s. 154.

To establish desertion it is necessary to prove some circumstance justifying the inference that the prisoner intended not to return to military duty in any corps, or intended to avoid some important particular service, such as active service, embarkation for foreign service, or service in aid of the civil power.

Attempt to desert.—To establish an attempt to desert, some act which, if completed, would constitute desertion, as above mentioned, must be proved. A mere intention to desert does not amount to an attempt to desert.

Part I.
ss. 12-13.

13. (1.) Every person subject to military law who commits any of the following offences ; that is to say, Fraudulent enlistment

(a.) When belonging to either the regular forces, or the militia, when embodied, without having first obtained a regular discharge therefrom, or otherwise fulfilled the conditions enabling him to enlist, enlists in Her Majesty's regular forces, or

(b.) When belonging to the regular forces without having fulfilled the conditions enabling him to enlist, enrol, or enter, enrolls himself, or enlists in the militia or in any of the reserve forces, not subject to military law, or enters the Royal Navy,

shall be deemed to have been guilty of fraudulent enlistment, and shall on conviction by court-martial be liable—

(i.) for the first offence to suffer imprisonment, or such less punishment as is in this Act mentioned ; and

(ii.) for the second or any subsequent offence to suffer penal servitude, or such less punishment as is in this Act mentioned.

(2.) When an offender has fraudulently enlisted on several occasions he may, for the purposes of this section, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs ; and it shall be lawful to charge an offender with any number of offences against this section at the same time, and to give evidence of such offences against him, and if he be convicted thereof to punish him accordingly ; and further, it shall be lawful, on conviction of a person for two or more such offences, to award him the higher punishment allowed by this section for a second offence as if he had been convicted by a previous court-martial of one of such offences.

(M.L.)

2 A

Part I. (3.) Where an offender is convicted of the offence of fraudulent enlistment, then, for the purposes of his liability under this section to the higher punishment for a second offence, the offence of deserting, or attempting to desert Her Majesty's service, may be reckoned as a previous offence of fraudulent enlistment under this section, with this exception, that the absence of the offender next before any fraudulent enlistment shall not, upon his conviction for that fraudulent enlistment, be reckoned as a previous offence of deserting or attempting to desert.

ss. 13-14.

The charge must specify the force to which the accused belonged at the time of his enlistment. A militiaman enlisting, when not embodied, cannot be charged under this section, though he may be charged under s. 33, for making a false answer. See also as to militiaman, 45 & 46 Vict., c. 49, s. 26, Q. R., Sect. VI, paras. 148-149.

Where a soldier is charged with fraudulent enlistment (by reason of which he has obtained a free kit) the receipt of that free kit must be mentioned in the charge, and proved in evidence in order to enable the court to sentence him to a deduction from his pay as compensation for the free kit, but the charge of fraudulently obtaining a free kit cannot by itself be maintained; see Q. R., Sect. VI, para. 84, and Rules, First Appendix, note as to use of Forms of Charges (23), p. 691.

Where the fraudulent enlistment has taken place more than three years before the trial, the obtaining of a free kit should not be mentioned in the charge, as a sentence of stoppages based upon that circumstance is illegal.

A copy or duplicate of the attestation paper is proof of the enlistment, and the issue of a free kit may be proved by a copy of a record thereof in the regimental books (s. 163, *g* and *h*).

Sub-section (3). As to conviction for two offences, and the punishment for the second offence, see note to s. 12.

Assistance
of or con-
nivance at
desertion.

14. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Assists any person subject to military law to desert Her Majesty's service; or
- (2.) Being cognisant of any desertion or intended desertion of a person subject to military law, does not forthwith give notice to his commanding officer,

or take any steps in his power to cause the deserter, or intending deserter, to be apprehended, shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Part I.

ss. 14-15.

Sub-section (1). It must be proved that the prisoner knew that the assistance given by him was for the purpose of the desertion.

Sub-section (2). *Does not forthwith give notice.* The time at which the accused became cognisant of the desertion, and, if he gave notice to his commanding officer, the time at which he gave notice, are material and should be specified in the charge.

Commanding officer. This includes any person having military command over the accused. The court may use their military knowledge in determining whether the person is for this purpose a commanding officer or not. See note to s. 7 (4).

If the charge is under the latter part of (2), the charge must allege the steps which it was in the power of the accused to take in order to cause the deserter, or intending deserter, to be apprehended.

15. Every person subject to military law who commits any of the following offences : that is to say,

Absence
from duty
without
leave.

- (1.) Absents himself without leave ; or
- (2.) Fails to appear at the place of parade or rendezvous appointed by his commanding officer, or goes from thence without leave before he is relieved, or without urgent necessity quits the ranks ; or
- (3.) Being a soldier, when in camp or garrison, or elsewhere, is found beyond any limits fixed or in any place prohibited by any general, garrison, or other order, without a pass or written leave from his commanding officer ; or
- (4.) Being a soldier, without leave from his commanding officer, or without due cause, absents himself from any school when duly ordered to attend there,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

(M.L.)

Part I. Sub-section (1.) *Absents himself.* See chapter III, paras. 13-19; and for the power of summary award of the commanding officer see s. 46 (4) (5).

ss. 15-16.

In charges under this section, if the absence or failure to appear or other act is proved, it will lie on the accused to show that he had leave or was under urgent necessity and had due cause for the absence, failure, or other act. A soldier tried for desertion or attempted desertion may under s. 56 be found guilty of absence without leave. When a soldier has been absent without leave for 21 days, a court of inquiry will assemble; s. 72.

The absence must be from military supervision, *i.e.*, the place where it is the soldier's duty to be, and where he can be found if wanted. Usually it must be absence from his barrack, camp, or station, but if his duty is to be in one part of the barrack, or he cannot be found when wanted, his absence from a part only of the barrack may amount to absence without leave.

If the hour of his absence is material for the purpose of proving a day's absence (see s. 138 and note, and s. 140), the hours of his departure and return must be stated in the particulars.

Involuntary absence, caused, for example, by disability through illness or detention in custody by the civil power, even though arising from the wrongful act of the accused, is not an offence under this section.

Under sub-section (2) the particular parade should be specified, so that the prisoner may be able to show, if he can, that he was not by order or custom, or for other reasons, bound to attend that parade.

Under sub-section (3) ignorance of the order, though it would properly tend to mitigate the punishment, does not entirely exculpate the prisoner. But misapprehension reasonably arising from want of clearness in the order may be a ground of exculpation.

A man absent without leave is not also liable to trial for failing to attend the parades, &c., during the period of his absence, and if he is tried on alternative charges for both offences, he can be convicted only upon one of the charges.

Sub-sections (3) and (4). *Commanding officer.* Any officer having military command over the accused and authority to grant leave will be commanding officer within these sub-sections. This matter can therefore be determined by the military knowledge of the court.

Disgraceful Conduct.

Scandalous
conduct of
officer.

16. Every officer who, being subject to military law, commits the following offence; that is to say,

behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall on conviction by court-martial be cashiered.

Part I
ss. 16-17.

An act or neglect which amounts to any of the offences specified in the Act, or which is to the prejudice of good order and military discipline, ought not, as a rule, to be tried under this section. Scandalous conduct may be either of a military or social character. But a charge of a social character is not to be preferred under this section, unless it is of so grave a nature as to render the officer unfit to remain in the service, and therefore is scandalous in respect of his military character. Social misconduct which is not so grave as to bring scandal on the service, should not be made a ground of charge against an officer, but may well form the subject of reproof and advice on the part of his colonel or other superior officer.

17. Every person subject to military law who commits any of the following offences ; that is to say,

Fraud by persons in charge of moneys or goods.

Being charged with or concerned in the care or distribution of any public or regimental money or goods, steals, fraudulently misapplies, or embezzles the same, or is concerned in or connives at the stealing, fraudulent misapplication, or embezzlement thereof, or wilfully damages any such goods, shall on conviction by court-martial be liable to suffer penal servitude, or such less punishment as is in this Act mentioned.

The distinction between stealing and the other offences is roughly this—that a man is not said to steal a thing if, previously to the time at which he converted it to his own use, he was lawfully in possession of it. See chapter VII, para. 171 and exceptions, and paras. 175-178, 182.

This section does not apply to ordinary thefts, which are dealt with in s. 18 (4), but to those more serious offences committed by persons in a position of trust in relation to public or regimental property, where placed under their charge. The severe punishment of penal servitude can therefore be given. Under s. 56 a prisoner charged with stealing may be found guilty of embezzlement or of fraudulent misapplication ; and a prisoner charged with embezzlement may be found guilty of stealing or of fraudulent misapplication.

If the charge is for fraudulent misapplication or embezzlement,

Part I. it must allege that the property was improperly applied for the use of the accused himself or some person connected with him, and not
ss. 17-18. for a public purpose.

If no evidence is forthcoming as to the particular mode of misapplication, the court may, in the absence of explanation from the accused, infer that the property was misapplied from the fact of its not having been properly applied. See Chapter VII, para. 188.

Each instance of embezzlement should be in a separate charge. See p. 704, note.

A mere error or irregularity in accounts, or a mistaken misapplication of money or goods, does not constitute an offence under this section. There must be an intent to defraud on the part of the accused, either for the benefit of himself or somebody else; and this must be particularly recollected in the case (for example) of a non-commissioned officer's accounts getting into confusion, through the neglect or carelessness of superiors.

The charge must show in detail that the prisoner was charged with or concerned in the care or distribution of the money or goods which are alleged to have been fraudulently misapplied or embezzled, but the court may use their military knowledge to determine that the accused, if holding a particular office, was, by virtue of his office, so charged or concerned. A soldier posted as sentry over a place containing public property, would not be "charged with" the care of the property within this section.

The expression "charged with" means officially charged with, that is to say, in virtue of the public office the accused formally holds. A corporal or private entrusted by a pay-serjeant for his own convenience with public money would not fall under this section, although he might be convicted under s. 18.

As to court of inquiry on discovery of loss of stores, &c., see Q.R., Sect. VI, para. 127A.

Disgraceful
conduct of
soldier.

18. Every soldier who commits any of the following offences; that is to say,

- (1.) Malingers, or feigns or produces disease or infirmity,
or
- (2.) Wilfully maims or injures himself or any other soldier, whether at the instance of such other soldier or not, with intent thereby to render himself or such other soldier unfit for service, or causes himself to be maimed or injured by any person, with intent thereby to render himself unfit for service; or
- (3.) Is wilfully guilty of any misconduct, or wilfully

disobeys, whether in hospital or otherwise, any orders, by means of which misconduct or disobedience he produces or aggravates disease or infirmity, or delays its cure ; or

- (4) Steals or embezzles or receives knowing them to be stolen or embezzled any money or goods the property of a comrade or of an officer, or any money or goods belonging to any regimental mess or band, or to any regimental institution, or any public money or goods ; or

- (5.) Is guilty of any other offence of a fraudulent nature not before in this Act particularly specified, or of any other disgraceful conduct of a cruel, indecent, or unnatural kind,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1)-(3). The charge should show in what way a soldier has *mingered*, or what disease or infirmity he has feigned or produced ; or what particular injury has been committed ; or of what misconduct or wilful disobedience he has been guilty. In a case under sub-section (2) evidence will have to be given of the intent, but if the act is shown to have been done wilfully and not accidentally, the intent may be presumed

Feigning. This term means not merely that a soldier reported himself sick when he was not sick, but that he reported himself sick when he *knew* that he was not sick, and that he feigned or pretended certain symptoms which the medical officer was satisfied did not exist.

Malingering is a feigning of disease, but of a more serious nature ; implying some deceit, such as the previous application of a ligature, or of the taking of some drug, or some other act which, though it did not actually produce disease or retard a cure, yet produced the appearance of the disease said to exist.

The misconduct under sub-section (3) must be with the intent of producing or aggravating the disease, or delaying the cure, as the case may be. The involuntary production, aggravation, or prolongation of *delirium tremens* by intemperate habits, or of venereal disease by immoral conduct, does not render a soldier liable under this sub-section.

Sub-section (1). See note on s. 17.

Part I. It is not material to whom the property belongs, so long as it is shown to belong to a comrade, officer, regimental mess, regimental band, or regimental institution. If it turns out that the property belongs to some person or persons not included in the above description, the prisoner must be acquitted, as the offence could in that case only be charged under s. 41.

ss. 18-20.

If a man steals the uniform coat of his comrade, he can be charged with stealing it either as being public property or as being the property of his comrade; for although the coat is public property, yet the comrade has such special interest in it (see Chapter VII, para. 160) as to justify the charge of stealing the property of a comrade.

Sub-section (5). A charge under this sub-section for anything that is an offence under any previous enactment of the Act will be bad.

Of a fraudulent nature. The particulars must show that there was fraud in the act with which the prisoner is charged, amounting to a crime according to the ordinary criminal law; and any mere misappropriation of money or irregularity in accounts will not be sufficient to support a charge under this sub-section.

Disgraceful conduct. The charge must specify the details of the particular act or acts alleged to constitute the disgraceful conduct.

Drunkenness.

Drunkenness.

19. Every person subject to military law who commits the following offence; that is to say,

The offence of drunkenness, whether on duty or not on duty, shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned, and, either in addition to or in substitution for any other punishment, to pay a fine not exceeding one pound.

See Chapter III, paras. 25-30, and s. 46 (2), (3), and note.

Offences in relation to Prisoners.

Permitting escape of prisoner.

20. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) When in command of a guard, picket, patrol, or post, releases without proper authority, whether wilfully or otherwise, any prisoner committed to his charge ; or
- (2.) Wilfully or without reasonable excuse, allows to escape any prisoner who is committed to his charge, or whom it is his duty to keep or guard,

Part I.
s. 20.

shall on conviction by court-martial be liable if he has acted wilfully to suffer penal servitude, or such less punishment as is in this Act mentioned, and in any case to suffer imprisonment or such less punishment as is in this Act mentioned.

In a charge under sub-section (1), if proof is given that the prisoner was released, the accused must show the authority under which he acted. The court may use their military knowledge with respect to whether the authority alleged was or was not sufficient.

In a charge under sub-section (2), if there is a doubt as to the prisoner having acted *wilfully*, he should be charged with having acted *without reasonable excuse*, or he may be charged with having acted wilfully, and in an alternative charge with having acted without reasonable excuse. See s. 56 (5), and note.

Under sub-section (2), where an escort consisting of a corporal and a private lose their prisoner, the corporal is liable to conviction unless he can prove that the escape took place in circumstances against which he could not reasonably guard. The private would be guilty, upon proof that he shared in the wilful act or negligence of the corporal, or that the prisoner while committed to his charge during the temporary and necessary absence of the corporal was allowed to escape, unless he could show that he used all reasonable means to guard against the escape. In the latter case the corporal would not be guilty if he could show that his temporary delegation of his duty to the private was occasioned by some necessary cause, and that he took reasonable precautions for the safe custody of the prisoner during his absence.

A man commits this offence wilfully by any act or omission, the reasonable and probable consequence of which would be the escape of the prisoner committed to his charge, or whom it was his duty to guard or keep.

A man who having completed a term of imprisonment is being escorted from the prison to rejoin his regiment is not a prisoner.

Part I.

s. 21.
Irregular
imprison-
ment.

21. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Unnecessarily detains a prisoner in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation ;
- (2.) Having committed a person to the custody of any officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal, into whose custody the person is committed, an account in writing signed by himself of the offence with which the person so committed is charged ; or
- (3.) Being in command of a guard, does not, as soon as he is relieved from his guard or duty, or if he is not sooner relieved, within twenty-four hours after a prisoner is committed to his charge, give in writing to the officer to whom he may be ordered to report the prisoner's name and offence so far as known to him, and the name and rank of the officer or other person by whom he was charged, accompanied, if he has received the account above in this section mentioned, by that account,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The prosecutor will have to prove the facts which either show or enable the court to infer that the accused could have brought the prisoner to trial or brought his case before the proper authority for

investigation. If these are proved it will lie on the accused to prove the necessity for the detention of the prisoner. Part I.

See note to s. 45; and as to entry of charge in guard report, ss. 21-24.
Q.R., Sect. VI, para. 37.

22. Every person subject to military law who commits the following offence; that is to say, Escape from confinement.

Being in arrest or confinement, or in prison or otherwise in lawful custody, escapes, or attempts to escape,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned; and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

As to arrest and confinement, see Chapter IV, paras. 1-17.

An escape may be either with or without force or artifice, and either with or without the consent of the custodian.

Offences in relation to Property.

23. Every person subject to military law who commits any of the following offences; that is to say, Corrupt dealings in respect of supplies to forces.

- (1.) Connives at the exaction of any exorbitant price for a house or stall let to a sutler; or
- (2.) Lays any duty upon, or takes any fee or advantage in respect of, or is in any way interested in, the sale of provisions or merchandise brought into any garrison, camp, station, barrack, or place, in which he has any command or authority, or the sale or purchase of any provisions or stores for the use of any of Her Majesty's forces,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

24. Every soldier who commits any of the following offences; that is to say, Deficiency in and injury to equipment.

- (1.) Makes away with, or is concerned in making away

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with (whether by pawning, selling, destruction or otherwise howsoever) his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge ; or

(2.) Loses by neglect anything before in this section mentioned ; or

(3.) Makes away with (whether by pawning, selling, destruction, or otherwise howsoever) any military decoration granted to him ; or

(4.) Wilfully injures anything before in this section mentioned or any property belonging to a comrade, or to an officer, or to any regimental mess or band, or to any regimental institution, or any public property ; or

(5.) Ill-treats any horse used in the public service,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

For the purposes of this section, the expression "equipments" includes any article issued to a soldier for his use, or entrusted to his care for military purposes.

As to a charge under this section, see Q.R., Sect. VI, paras. 85-89 ; Rules, First App., Note as to use of forms of charges, para. (23). As to liability of civilian pawnbroker, &c., see s. 156.

Sub-section (1). This sub-section shows clearly that, whether arms are pawned, sold, destroyed or otherwise made away with, the military offence is the same, namely, the making away with them ; but the degree of the offence may differ according as they have been pawned, sold, or destroyed, or otherwise made away with, and the punishment awarded may vary accordingly.

A charge under this or the next sub-section of making away with, &c., money or property not mentioned in these sub-sections would be bad, though if the act amounted to stealing or embezzlement it would be punishable under s. 18, or if there was proof of any wilful act or neglect, the soldier might be charged with an offence under s. 40.

Making away with is distinct from theft, as it applies only to goods in a man's own possession, and which, therefore, he cannot in

law steal. Unless there is some positive act of pawning, sale, &c., a charge for making away with should not be preferred, (See note to s. 17, and Q.R., Sect. VI, paras. 85-86. Part I.
ss. 24-25.

Equipments. The definition of this word at the end of the section will include such articles as blankets and barrack furniture.

Clothing includes clothing supplied to a man in hospital.

Sub-section (2). This is not intended to punish a soldier for a deficiency in his kit occasioned by accident or mere carelessness rather than by culpable neglect. On the other hand, the fact that a man has not got his arms, regimental necessaries, &c., at a time when it was his duty to have them, is *prima facie* evidence of his having lost them by neglect, and the court may call on him to show that the loss was not occasioned by any fault on his part.

Sub-section (3). *Military decoration.* This includes any medal, clasp, good-conduct badge, or decoration. Section 190 (18). Losing by neglect a military decoration is not an offence.

Sub-section (4). *Wilfully injures.* A charge for injuring the property here mentioned must be laid under this section, and not under section 41. The prosecutor must adduce evidence which will either prove, or enable the court to infer, that the injury was not accidental or done by some other person. If the injury appears to be the result of neglect, it will be for the court to determine whether the neglect was wilful and intended to injure the arms, &c., or was mere carelessness. In the latter case no offence under this section would be committed. The regulation value will be taken (without evidence) to be the value of any article lost or damaged, which being a part of military equipment has a regulation value.

Sub-section (5). A soldier groom who ill-treats the charger kept for military purposes of a mounted infantry officer will bring himself within this sub-section. "Horse" includes mule and other beasts of burden or draught. Section 190 (40).

Offences in relation to False Documents and Statements.

25. Every person subject to military law who commits any of the following offences; that is to say,

Falsifying
official docu-
ments and
false decla-
rations.

- (1.) In any report, return, muster roll, pay list, certificate, book, route, or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy—

- (a.) Knowingly makes or is privy to the making of any false or fraudulent statement; or

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(b.) Knowingly makes or is privy to the making of any omission with intent to defraud ; or

(2.) Knowingly and with intent to injure any person or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce ; or

(3.) Where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration,

shall, on conviction by court-martial, be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

The court may use their military knowledge in determining any question as to the duty of the accused in a case arising under this section.

A trivial error in a report should not, in the absence of fraud or bad faith, be made the ground of a charge under sub-section (1) (a).

In a charge under sub-section (1) (b) or sub-section (2) of intent to defraud, it will not be necessary to show an intent to defraud the government or a particular individual, so long as an intent to defraud is shown.

A charge under sub-section (2) or (3) should show why it was the accused's duty to preserve the document or to make the declaration ; but where the situation of the accused is proved, the court may use their military knowledge to infer his duty.

Sub-section (3) does not include statements in a summary of evidence or verbal statements.

Neglect to
report, and
signing in
blank.

26. Every person subject to military law who commits any of the following offences ; that is to say,

(1.) When signing any document relating to pay, arms, ammunition, equipments, clothing, regimental necessaries, provisions, furniture, bedding, blankets, sheets, utensils, forage, or stores, leaves in blank any material part for which his signature is a voucher ; or

(2.) Refuses or by culpable neglect omits to make or

send a report or return which it is his duty to make or send, Part I.

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned. ss. 26-27.

Sub-section (2). The charge must show that it was the duty of the accused to make the report or return. If the report or return was one for which the superior had no right to call, there is no punishment for a refusal to make it. The neglect must be something more than mere forgetfulness or mistake.

27. Every person subject to military law who commits any of the following offences ; that is to say, False accusation, or false statement by soldier.

- (1.) Being an officer or soldier, makes a false accusation against any other officer or soldier, knowing such accusation to be false ; or
- (2.) Being an officer or soldier, in making a complaint where he thinks himself wronged, knowingly makes any false statement affecting the character of an officer or soldier, or knowingly and wilfully suppresses any material facts ; or
- (3.) Being a soldier, falsely states to his commanding officer that he has been guilty of desertion or of fraudulent enlistment, or of desertion from the Navy, or has served in and been discharged from any portion of the regular forces, reserve forces, or auxiliary forces, or the Navy ; or
- (4.) Being a soldier, makes a wilfully false statement to any military officer or justice in respect of the prolongation of furlough,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). A mere false statement, not involving an accusation, is not within this sub-section.

Sub-section (3). *To his commanding officer.* It is not enough for the statement to be made merely to a superior officer ; but the

Part I. term "commanding officer" will include any one whose duty it would be under the Queen's Regulations or according to the custom of the service to deal with a charge of desertion or fraudulent enlistment, if it were made against the soldier. A written statement made to any person for the purpose of being laid before the commanding officer is a statement to the commanding officer.

ss. 27-28.

Sub-section (4). *Prolongation of furlough.* A justice has power under s. 173 to extend furloughs in certain cases for a month.

Offences in relation to Courts-Martial.

Offences in relation to courts-martial.

28. Every person subject to military law who commits any of the following offences ; that is to say,

- (1.) Being duly summoned or ordered to attend as a witness before a court-martial, makes default in attending ; or
- (2.) Refuses to take an oath or make a solemn declaration legally required by a court-martial to be taken or made ; or
- (3.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or
- (4.) Refuses, when a witness, to answer any question to which a court-martial may legally require an answer ; or
- (5.) Is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court,

shall on conviction by a court-martial other than the court in relation to or before whom the offence was committed be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned :

Provided that where a person subject to military law is guilty of contempt of a court-martial by using insulting or threatening language, or by causing any interruption

or disturbance in the proceedings of such court, that court, if they think it expedient, instead of the offender being tried by another court-martial, may by order under the hand of the president commit such offender to prison, there to be imprisoned, with or without hard labour, for a period not exceeding twenty-one days.

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s. 28.

See generally as to summoning and attendance of witnesses, Rules 14, 75-78.

An offence under this section is not triable by the court in relation to or before whom it was committed, except that for contempt of court by a person subject to military law, the court may imprison him for not more than 21 days. (See Rule 59, note.)

As a rule courts should accept an apology sufficient to vindicate their dignity without resorting to the extreme measure of imprisonment.

Civilians guilty of the offences mentioned in this section are punishable by a civil court under s. 126.

Sub-section (1). The court is formed when the members are assembled, even before they are sworn, and anything which would be a contempt after the court was sworn, would be a contempt once the members are assembled.

Sub-section (5). The interruption or disturbance need not be caused within the precincts of the court itself, if the circumstances are such as to constitute a contempt of court.

Proviso. The enactments of s. 47 (5) and s. 48 (6) which prohibit a regimental or district court from trying an officer, would not exempt an officer guilty of contempt of such a court from liability to be committed to prison by the court under the proviso; but the correct course for the court would almost invariably be to adjourn and report to the proper authority. The summary proceeding for contempt is not a trial, and the offence being as a rule committed in view of the court, opportunity should be given to the offender to offer any explanation of or excuse for his conduct, but no further inquiry will be necessary. The order of the court does not require confirmation.

To imprison for contempt of court a prisoner who is under trial, though legal, requires very exceptional circumstances to justify it; his imprisonment must immediately follow his contempt, and cannot be an addition to his sentence after conviction, or be ordered to commence at the date of the expiration of the imprisonment under the sentence. The court must adjourn until the end of the imprisonment.

Part I. 29. Every person subject to military law who commits the following offence; that is to say,

ss. 29-30.

False evidence.

When examined on oath or solemn declaration before a court-martial, or any court or officer authorised by this Act to administer an oath, wilfully gives false evidence,

shall be liable on conviction by court-martial to suffer imprisonment, or such less punishment as is in this Act mentioned.

Accidental or trifling mistakes or discrepancies in evidence will not be made the subject of a charge under this section.

The production of the proceedings of the court-martial before which the false swearing is alleged to have taken place is not enough to prove that the accused swore as charged. The member of the court who recorded the proceedings, or some person from personal knowledge must prove this. The evidence of one witness without corroboration in some material respect is not sufficient to prove the falsehood of the matter sworn. (See Ch. VII, para. 270.)

Offences in relation to Billeting.

Offences in relation to billeting.

30. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to billeting); that is to say,

- (1.) Is guilty of any ill-treatment, by violence, extortion, or making disturbances in billets, of the occupier of a house in which any person or horse is billeted; or
- (2.) Being an officer, refuses or neglects, on complaint and proof of such ill-treatment by any officer or soldier under his command, to cause compensation to be made for the same; or
- (3.) Fails to comply with the provisions of this Act with respect to the payment of the just demands of the person on whom he or any officer or soldier under his command, or his or their horses, have been billeted, or to the making up and

transmitting of an account of the money due to such person ; or **Part I.**
s. 80.

- (4.) Wilfully demands billets which are not actually required for some person or horse entitled to be billeted ; or
- (5.) Takes or knowingly suffers to be taken from any person any money or reward for excusing or relieving any person from his liability in respect of the billeting or quartering of officers, soldiers, or horses, or any part of such liability ; or
- (6.) Uses or offers any menace to or compulsion on a constable or other civil officer to make him give billets contrary to this Act, or tending to deter or discourage him from performing any part of his duty under the provisions of this Act relating to billeting, or tending to induce him to do anything contrary to his said duty ; or
- (7.) Uses or offers any menace to or compulsion on any person tending to oblige him to receive, without his consent, any person or horse not duly billeted upon him in pursuance of the provisions of this Act relating to billeting, or to furnish any accommodation which he is not thereby required to furnish,

shall on conviction by court-martial be liable, if an officer to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The provisions as to the billeting of officers and soldiers are contained in Part III, ss. 102-111, and ss. 119-121.

See s. 111 as to the jurisdiction of magistrates to deal with officers or soldiers guilty of offences under this section.

(4.) *Wilfully demands.* The demand constitutes the offence, and it is immaterial whether the billet is actually obtained or not.

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Offences in relation to Impressment of Carriages.

s. 31.

Offences in relation to the impressment of carriages, and their attendants.

31. Every person subject to military law who commits any of the following offences (in this Act referred to as offences in relation to the impressment of carriages); that is to say,

- (1.) Wilfully demands any carriages, animals, or vessels which are not actually required for the purposes authorised by this Act ; or
- (2.) Fails to comply with the provisions of this Act relating to the impressment of carriages as regards the payment of sums due for carriages or as regards the weighing of the load ; or
- (3.) Constrains any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages, to travel against the will of the person in charge thereof beyond the proper distance, or to carry against the will of such person any greater weight than he is required by the said provisions to carry ; or
- (4.) Does not discharge as speedily as practicable any carriage, animal, or vessel furnished in pursuance of the provisions of this Act relating to the impressment of carriages ; or
- (5.) Compels the person in charge of any such carriage, animal, or vessel, or permits him to be compelled to take thereon any baggage or stores not entitled to be carried, or, except where the carriage or animal is furnished upon a requisition of emergency, to take thereon any soldier or servant (except such as are sick), or any woman or person ; or
- (6.) Ill-treats or permits such person in charge to be ill-treated ; or
- (7.) Uses or offers any menace to or compulsion on a constable to make him provide any carriage,

animal, or vessel which he is not bound in pursuance of the provisions of this Act relating to the impressment of carriages to provide, or tending to deter or discourage him from performing any part of his duty in relation to the providing of carriages, animals, or vessels, or tending to induce him to do anything contrary to his said duty ; or

- (8.) Forces any carriage, animal, or vessel from the owner thereof,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The provisions as to the impressment of carriages are contained in Part III, ss. 112-121.

As to the jurisdiction of magistrates to deal with officers and soldiers guilty of these offences, see s. 118.

Offences in relation to Enlistment.

32. (1.) Every person having become subject to military law, who is discovered to have committed the following offence ; that is to say,

Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the regular forces without declaring the circumstances of his discharge or dismissal,

shall on conviction by court-martial be liable to suffer imprisonment, or such less punishment as is in this Act mentioned.

- (2.) For the purpose of this section, the expression "discharged with disgrace from any part of Her Majesty's forces" means discharged with ignominy, discharged as incorrigible and worthless,

Enlistment of soldier or sailor discharged with ignominy or disgrace.

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ss. 32-34.

discharged for misconduct, or discharged on account of conviction for felony or of a sentence of penal servitude.

Having become subject, i.e., having signed the declaration and oath, s. 80 (4) (a) (b). The wording in this and the next section is different from that in other sections ("every person subject, &c., who commits," &c.), because at the moment of committing the offence the man is not actually subject to military law.

Enlisted. The original attestation paper or one of the duplicates must be produced at the trial.

It is held that the non-declaration is *prima facie* proved by the attestation paper so produced showing answers to have been given inconsistent with such declaration.

A man who can show that when discharged he was not (from not having had a discharge certificate given him or for any other reason) made acquainted with the fact that his discharge was for one of the reasons constituting disgrace, ought not to be convicted under this section.

False
answers or
declarations
on enlist-
ment.

33. Every person having become subject to military law who is discovered to have committed the following offence ; that is to say,

To have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, shall on conviction by court-martial be liable to suffer imprisonment or such less punishment as is in this Act mentioned.

Having become subject. See note to the preceding section.

Attestation paper. The original or one of the duplicates must be produced at the trial.

The answer must be wilfully false ; thus where a man might reasonably have been mistaken as to the fact of his having "served," where, for instance, he was discharged as unfit before he had done duty or worn a uniform, a conviction would not hold good.

General
offences in
relation to
enlistment.

34. Every person subject to military law who commits any of the following offences ; that is to say,

(1.) Is concerned in the enlistment for service in the

regular forces of any man when he knows or has Part I.
reasonable cause to believe such man to be so ss. 34-36.
circumstanced that by enlisting he commits an
offence against this Act ; or

- 2.) Wilfully contravenes any enactments or the regula-
tions of the service in any matter relating to the
enlistment or attestation of soldiers of the regular
forces,

shall on conviction by court-martial be liable to suffer
imprisonment, or such less punishment as is in this Act
mentioned.

So circumstanced, i.e., discharged with disgrace, so that he
commits an offence under s. 32 ; or, belonging to the regular force
or otherwise, so that he is guilty of fraudulent enlistment under
s. 13, and of making a false answer under s. 33.

A recruiter who counsels or connives at an offence against
s. 33 on the part of a recruit falls within sub-section (1), as the
attestation is part of the process of enlistment.

Miscellaneous Military Offences.

35. Every person subject to military law who commit Traitorous words.
the following offence, that is to say,

Uses traitorous or disloyal words regarding the Sove-
reign,

shall on conviction by court-martial be liable, if an officer,
to be cashiered, or to suffer such less punishment as is in
this Act mentioned, and if a soldier, to suffer imprison-
ment, or such less punishment as is in this Act mentioned.

The words used are to be set out in the charge ; they may
be either spoken or written or published. It is not intended that
mere violent or vulgar language used by a man under the in-
fluence of liquor should be punished under this section.

36. Every person subject to military law who commits Injurious disclosures.
the following offence ; that is to say,

Whether serving with any of Her Majesty's forces or
not, without due authority either verbally or in

Part I.**ss. 36-38.**

writing, or by signal or otherwise, discloses the numbers or position of any forces, or any magazines or stores thereof, or any preparations for, or orders relating to, operations or movements of any forces, at such time and in such manner as in the opinion of the court to have produced effects injurious to Her Majesty's service,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

The unauthorised communication of intelligence to the enemy on active service is punishable under s. 5 (4).

A charge under this section must show how and when effects injurious to Her Majesty's service were produced.

As to injurious disclosures by private letters, see note to s. 4; and see also Q.R., Sect. VI, para. 13.

**Ill-treating
soldier.**

37. Every officer or non-commissioned officer who commits any of the following offences; that is to say,

- (1.) Strikes or otherwise ill-treats any soldier; or
- (2.) Having received the pay of any officer or soldier, unlawfully detains or unlawfully refuses to pay the same when due,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a non-commissioned officer, to suffer imprisonment, or such less punishment as is in this Act mentioned.

Sub-section (1). Forcing or striking a soldier when acting as sentinel is punishable under s. 6 (1) (d) more severely than the mere striking a soldier.

As the word "soldier" includes non-commissioned officer, it follows that the offence of one non-commissioned officer striking or ill-treating another falls within this section.

**Duelling
and
attempting
to commit
suicide.**

38. Every person subject to military law who commits any of the following offences; that is to say,

- (1.) Fights, or promotes or is concerned in or connives at fighting, a duel ; or Part f.
ss. 38-40.
- (2.) Attempts to commit suicide,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

An officer carrying a challenge is punishable under sub-section (1).

If death ensued, the surviving principal in the duel and both the seconds might be tried and convicted for murder.

39. Every person subject to military law who commits any of the following offences ; that is to say, Refusal to deliver to civil power officers and soldiers accused of civil offences.

On application being made to him neglects or refuses to deliver over to the civil magistrate, or to assist in the lawful apprehension of, any officer or soldier accused of an offence punishable by a civil court,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in this Act mentioned, and if a soldier, to suffer imprisonment, or such less punishment as is in this Act mentioned.

This offence may be committed not only in the United Kingdom, but in any colony or possession where there is a civilian judicature. An officer or soldier to whom an application is made under this section may require to see the warrant or other authority for the delivery over or apprehension ; and if none exists, no offence is committed by refusing the demand.

40. Every person subject to military law who commits any of the following offences ; that is to say, Conduct to prejudice military discipline

Is guilty of any act, conduct, disorder, or neglect, to the prejudice of good order and military discipline,

shall on conviction by court-martial be liable, if an officer, to be cashiered, or to suffer such less punishment as is in

Part I. this Act mentioned, and if a soldier to suffer imprisonment, or such less punishment as is in this Act mentioned.
ss. 40-41. Provided that no person shall be charged under this section in respect of any offence for which special provision is made in any other part of this Act, and which is not a civil offence; nevertheless the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this proviso, unless it appears that injustice has been done to the person charged by reason of such contravention; but the responsibility of any officer for that contravention shall not be removed by the validity of the conviction.

See Chapter III, para. 32.

To sustain a charge under this section it is absolutely necessary that the charge should recite the words of the Act. That is to say, there must be charged an "act" or "conduct," or "disorder," or "neglect," as the case may be, "to the prejudice of good order and military discipline."

But the mere use of these words as a description of certain conduct does not warrant a court in assuming that such conduct is legally an offence. A court is not warranted in convicting unless of opinion that the conduct charged (1) was committed by the prisoner, and (2) was to the prejudice both of good order and of military discipline, having regard to the conduct itself and to the circumstances in which it took place. It is only in this latter case that an offence of a non-military character falls within this section. Other offences of a non-military character, if tried at all under the Act, should be tried under s. 41.

Neglect must be wilful or culpable, and not merely arising from ordinary forgetfulness or error of judgment or inadvertence; and where the use of certain words regarding superiors is made the subject of a charge under this section, the words must have been said meaningfully, *i.e.*, with a guilty intent.

Attempts to commit most of the purely military offences under the Act, where such attempts are not (as, *e.g.*, an attempt to desert) specifically provided for, are triable under this section.

Offences punishable by ordinary Law.

Offences
punishable
by ordinary
law of
England.

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person

who, whilst he is subject to military law, shall commit any of the offences in this section mentioned, shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

- (1.) If he is convicted of treason, be liable to suffer death, or such less punishment as is in this Act mentioned; and
- (2.) If he is convicted of murder, be liable to suffer death; and
- (3.) If he is convicted of manslaughter or treason-felony be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and
- (4.) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and
- (5.) If he is convicted of any offence not before in this section particularly specified, which when committed in England is punishable by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows :—

- (a.) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within Her Majesty's dominions, other than the

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ss. 41-42.

United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court :

- (b.) A person subject to military law when in Her Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law.

Subject to such regulations, &c. See provisos (a) and (b).

This section in effect gives absolute jurisdiction to a court-martial to try any civil offence, except that a court-martial cannot try treason, murder, manslaughter, treason-felony, or rape, committed in the United Kingdom; and can only try these offences if committed in any place within the Queen's dominions, other than the United Kingdom and Gibraltar, if either the offender was on active service, or the place is more than one hundred miles from any city or town in which the offender can be tried for such offence by a competent civil court.

See as to these civil offences Chapter VII; and for definition of active service, see s. 189.

Where a civil offence is specified in the Act (*e.g.*, ss. 17, 18), an attempt to commit that offence can under (5) be ordinarily tried by court-martial, because by English law an attempt to commit a civil offence is ordinarily in itself an offence.

A field-general court-martial under s. 49 has jurisdiction to try any offence; but where the offence is not committed on active service, such a court can only be convened for its trial in the cases specified in s. 49 (1) (a).

Redress of Wrongs.

Mode of
complaint
by officer.

42. If an officer thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, he may complain to the Commander-in-Chief in order to obtain justice, who is hereby required to examine into such complaint, and through a Secretary of State

make his report to Her Majesty in order to receive the directions of Her Majesty thereon.

Part I.

ss. 42-43.

It is the custom of the service to forward every complaint through the officer commanding the regiment; and an officer would not be justified in deviating from this course, unless the commanding officer should refuse, or unreasonably delay, to forward it. An officer, on addressing himself directly to the general in command, should apprise his commanding officer of his doing so, and must observe in the channel of approach to the Commander-in-Chief each intermediate gradation, as the general of brigade or division.

Although the Commander-in-Chief is required to examine into the complaint and report to Her Majesty, he is not debarred from expressing his own view of the case. Even an expression of opinion by the intermediate general officer will in many cases suffice to render further steps unnecessary. An officer should not be disposed to push to extremes his right to bring his complaint before the Sovereign. The report to Her Majesty is to be made through the Secretary of State, the constitutional adviser of the Crown.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1), (2).

43. If any soldier thinks himself wronged in any matter by any officer other than his captain, or by any soldier, he may complain thereof to his captain, and if he thinks himself wronged by his captain, either in respect of his complaint not being redressed or in respect of any other matter, he may complain thereof to his commanding officer, and if he thinks himself wronged by his commanding officer either in respect of his complaint not being redressed, or in respect of any other matter, he may complain thereof to the general or other officer commanding the district or station where the soldier is serving; and every officer to whom a complaint is made in pursuance of this section shall cause such complaint to be inquired into, and shall, if on inquiry he is satisfied of the justice of the complaint so made, take such steps as may be necessary for giving full redress to the complainant in respect of the matter complained of.

Mode of
complaint
by soldier

Part I. The mode of preferring a complaint is set forth in the form in the soldier's personal account book. Complaints may be made **ss. 48-44.** respecting any matter, but can be made by an individual only. The combined complaint of several can never be permissible, but should not, if well founded, be treated as mutinous, where it is plain that the only object of those making the complaint is to procure redress of the matters by which they think themselves wronged. A complaint cannot be legitimately preferred to a superior officer except in the regular course defined by this section,—that is to say, first to the captain and then to the commanding officer. It is only where the captain refuses or unnecessarily delays to redress or forward the complaint that a direct application can be made to the commanding officer; and it is only if the commanding officer similarly refuses or delays that a direct application can be made to the general or other officer commanding the district or station. The captain, in the one case, and the commanding officer in the other, ought to be informed of the application being made to his superior.

The commanding officer to whom the complaint is made will usually be the commanding officer as defined in Rule 128; but if the complaint is made to any other officer, that officer should receive it and should at once forward it to the commanding officer of the complaining soldier as defined by that Rule, and the complaint will then be dealt with as properly made.

The only exception to the above rule as to the course of complaints, is on occasion of the question which general officers at their yearly inspections are required to put to regiments, as to whether there are any complaints. See Q.R., Sect. V.

A soldier cannot in any way be punished for making a complaint under this section, whether it be frivolous or not, and he ought not, for making a complaint, to be treated in any way with harshness or suspicion.

A false accusation or statement made on preferring a complaint under this section is punishable under s. 27 (1), (2).

Punishments.

Scale of
punish-
ments by
courts-
martial.

44. Punishments may be inflicted in respect of offences committed by persons subject to military law and convicted by courts-martial,—

In the case of officers, according to the scale following :

a. Death.

b. Penal servitude for a term not less than three years.

c. Imprisonment, with or without hard labour, for a term not exceeding two years. Part I.
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d. Cashiering.

e. Dismissal from Her Majesty's service.

f. Forfeiture in the prescribed manner of seniority of rank, either in the army or in the corps to which the offender belongs, or in both.

g. Reprimand, or severe reprimand.

In the case of soldiers, according to the scale following :

h. Death.

i. Penal servitude for a term not less than three years.

k. Imprisonment, with or without hard labour, for a term not exceeding two years.

l. Discharge with ignominy from Her Majesty's service.

m. Reduction in the case of a non-commissioned officer to a lower grade, or to the ranks.

n. Forfeitures, fines, and stoppages.

Provided that—

- (1.) Where in respect of any offence under this Act there is specified a particular punishment, or such less punishment as is in this Act mentioned, there may be awarded in respect of that offence, instead of such particular punishment (but subject to the other regulations of this Act as to punishments, and regard being had to the nature and degree of the offence) any one punishment lower in the above scales than the particular punishment.
- (2.) An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
- (3.) An officer when sentenced to forfeiture of seniority of rank may also be sentenced to reprimand or severe reprimand.

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s. 44.

- (4.) A soldier when sentenced to penal servitude or imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from Her Majesty's service.
- (5.) Where a soldier on active service is guilty of an aggravated offence of drunkenness, or of an offence of disgraceful conduct, or of any offence punishable with death or penal servitude, it shall be lawful for a court-martial to award for that offence such summary punishment other than flogging as may be directed by rules to be made from time to time by a Secretary of State; and such summary punishment shall be of the character of personal restraint or of hard labour, but shall not be of a nature to cause injury to life or limb, and shall not be inflicted where the confirming officer is of opinion that imprisonment can with due regard to the public service be carried into execution.
- (6.) The said summary punishment shall not be inflicted upon a non-commissioned officer, or upon a reduced non-commissioned officer, for any offence committed while holding the rank of non-commissioned officer.
- (7.) "An aggravated offence of drunkenness" for the purposes of this section means drunkenness committed on the march or otherwise on duty, or after the offender was warned for duty, or when by reason of the drunkenness the offender was found unfit for duty; and notwithstanding anything in this Act it shall not be incumbent on the commanding officer to deal summarily with such aggravated offence of drunkenness.
- (8.) "An offence of disgraceful conduct" for the purposes of this section means any offence specified in section eighteen of this Act.
- (9.) All rules with respect to summary punishment

made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

- (10.) For the purpose of commutation of punishment the summary punishment above mentioned shall be deemed to stand in the scale of punishments next below imprisonment.
- (11.) In addition to or without any other punishment in respect of any offence, an offender convicted by court-martial may be subjected to forfeiture of any deferred pay, service towards pension, military decoration or military reward, in such manner as may for the time being be provided by Royal Warrant, but shall not, save as may be provided by Royal Warrant, be liable to any forfeiture under the Regimental Debts Act, 1893,^{56 & 57 Vict. c. 5.} or under any Act relating to the military savings banks, or any regulations made in pursuance of either of the above-mentioned Acts.
- (12.) In addition to or without any other punishment in respect of any offence, an offender may be sentenced by court-martial to any deduction authorised by this Act to be made from his ordinary pay.
- (13.) No officer or non-commissioned officer shall, under or by virtue of any power or authority derived from any foreign potentate or ruler, inflict, or cause to be inflicted, on any person subject to military law under this Act, for or in respect of any offence against such law, any punishment not authorised by this Act.

As to the principle of affixing to each offence a maximum punishment, instead of, as formerly, "such punishment as a general or other court-martial may award," see Ch. III, para. 35.

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s. 44.

b. Penal Servitude. See as to the execution of a sentence of penal servitude, sections 58–62, and sections 68, 131, and notes.

c. Imprisonment. As to rules for awarding terms of imprisonment in days, months, or years, as the case may require, see Q.R., Sect. VI, para. 108. As to execution of a sentence, see ss. 63–67, 131–135, and notes; and as to duration of sentence, see s. 68.

A prisoner sentenced to imprisonment without hard labour is, in England, obliged by prison rules to do some labour, unless directed to be imprisoned as a first-class misdemeanant, in which case he is allowed to receive visits, and has other privileges.

A soldier sentenced to six months' imprisonment is liable in commutation thereof either wholly or partly to general service and to transfer to any corps. Section 83 (7).

An offender does not cease to be subject to the Act while undergoing a sentence of penal servitude or imprisonment, though he has been discharged or dismissed from the service. S. 158 (2).

f. Forfeiture . . . of seniority of rank. See Rule 47.

g. Reprimand or severe reprimand. Reprimands vary from a public and severe reprimand to a private reprimand. A public reprimand may be administered at the head of a regiment, brigade, or division, paraded for the purpose; or it may be conveyed in general orders. A private reprimand is usually given by the commanding officer of a regiment or brigade, at his quarters, in the presence of the officers of the regiment, or of the officers of equal and superior rank only, or simply in the presence of a staff officer. The manner and time of delivering the reprimand is appointed by the confirming authority.

For the additional punishment of deduction from pay, see proviso (12) and section 137.

m. Reduction. Service in the lower grade or as a private soldier will reckon from the date of signing the original sentence, whether the original sentence was reduction, or whether reduction was a revised sentence, or a mitigation by the confirming officer from a more severe sentence.

n. Forfeitures. i.e. forfeitures of service towards discharge, see sections 73, 79 (2), 84, 161 (which, however, are consequential and cannot be awarded by sentence of court-martial), and the forfeitures mentioned in provisos (11) and (12), which include forfeiture of good conduct badges and medals with the pay or money attached thereto, and can usually be awarded by court-martial, but under the Royal Warrant cannot be awarded by a regimental court-martial. They may be more severe in effect than a short imprisonment.

As to restoration of forfeited service, see s. 79 (2) *ad fin.*

Fines. These are not authorised to be imposed for any offence

except drunkenness, and cannot exceed, if imposed by a court-martial, one pound, or if imposed by a commanding officer, ten shillings.

Stoppages. See proviso (12). Section 138 sets out the cases in which penal deductions or stoppages may be made from the ordinary pay of the soldier; and section 139 provides for their remission.

Provisos.

(1.) *Any one punishment.* The three next provisos, and (11) and (12) specify the particular instances in which more than one punishment may be given.

(2.) Care must be taken to comply with this provision; a sentence to penal servitude *and* to be cashiered is incorrect.

(3.) For definition of active service, see section 189.

(5.) This summary punishment must not be confused with the punishments awarded summarily by the commanding officer.

For Rules for summary punishment see p. 764.

Death, or penal servitude, or imprisonment, but no other punishment, can be commuted into summary punishment.

The following conditions are essential to the legality of summary punishments:—

(1.) The offender must be on active service, and when he committed the offence a soldier other than a warrant or non-commissioned officer.

(2.) He must have been guilty of an offence punishable with death or penal servitude, or of an aggravated offence of drunkenness, or of an offence of disgraceful conduct.

(3.) The punishment must be in conformity with the Rules made by the Secretary of State, see p. 764.

(4.) The confirming officer must be of opinion that imprisonment cannot, with due regard to the public service, be carried into execution.

As to aggravated offence of drunkenness, see sub-section (7).

The offence of disgraceful conduct means any offence specified in s. 18; see sub-section (8).

The offences punishable with death are in sections 4, 6 (1), 7, 8 (1), 9 (1), 12 (1), and 41.

The offences punishable with penal servitude are in sections 5, 8 (2), 9 (2), 12 (1), 13 (1), 17, 20, and 41.

(11.) As to these forfeitures, see Royal Warrant, Parts I and II, Pay and Non-effective Pay.

(12.) As to these deductions see section 137 (officer) and section 188 (soldier).

Part I.

ARREST AND TRIAL.

s. 45.

Arrest.

Custody of
persons
charged
with
offences.

45. The following regulations shall be enacted with respect to persons subject to military law when charged with offences punishable under this Act :

- (1.) Every person subject to military law when so charged may be taken into military custody :
Provided, that in every case where any officer or soldier not on active service remains in such military custody for a longer period than eight days without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his commanding officer in manner prescribed ; and a similar report shall be forwarded every eight days until a court-martial is assembled or the officer or soldier is released from custody ;
- (2.) Military custody means, according to the usages of the service, the putting the offender under arrest or the putting him in confinement :
- (3.) An officer may order into military custody an officer of inferior rank or any soldier, and any non-commissioned officer may order into military custody any soldier, and an officer may order into military custody an officer (though he be of higher rank) engaged in a quarrel, fray, or disorder ; and any such order shall be obeyed, notwithstanding the person giving the order and the person in respect of whom the order is given do not belong to the same corps, arm, or branch of the service :
- (4.) An officer or non-commissioned officer commanding a guard or a provost-marshal or assistant provost-marshal shall not refuse to receive or keep any person who is committed to his custody by any

officer or non-commissioned officer, but it shall be the duty of the officer or non-commissioned officer who commits any person into custody to deliver at the time of such committal, or as soon as practicable, and in every case within twenty-four hours thereafter, to the officer, non-commissioned officer, provost-marshal, or assistant provost-marshal into whose custody the person is committed, an account in writing, signed by himself, of the offence with which the person so committed is charged :

- (5.) The charge made against every person taken into military custody shall without unnecessary delay be investigated by the proper military authority, and, as soon as may be, either proceedings shall be taken for punishing the offence, or such person shall be discharged from custody.

It will be convenient to give a summary of the provisions for preventing a person from being kept in custody without his case being dealt with by the proper authority.

An officer or non-commissioned officer who commits a person into custody should sign and deliver to the officer or non-commissioned officer into whose custody such person is committed, a written account (termed "the crime") of the offence with which the person so committed is charged. He should, if possible, do this at the time of committal, but at any rate must do so within 24 hours after that time. See ss. 21 (2), 45 (4). If the "crime" is not delivered at the time of committal, a verbal report to the same effect is to be made (Q.R., Sect. VI, para. 19), but non-delivery of the "crime" will not excuse a refusal to receive an offender into custody. The officer or non-commissioned officer into whose custody the prisoner is committed, must report in writing the prisoner's name and offence, as far as known to him, and the name and rank of the person by whom he is charged (s. 21 (3)). This report must be made as soon as he is relieved from his guard or duty, if relieved within 24 hours after the committal, and in any case within those 24 hours. It must be accompanied by the "crime," if he has received it; and should be made by an entry in the guard report, and he should send the "crime," or a copy thereof, to the commanding officer of the prisoner. Q.R., Sect. VI, para. 19). If he has not received the

Part I. "crime," he must mention the circumstance in his report; and
 s. 45. if the "crime" is not delivered within the 24 hours, the commander of the guard must make a further report to the superior authority, who, if evidence sufficient to justify the detention of the prisoner is not forthcoming, will at the expiration of 48 hours from the time of committal order him to be released. (Q.R., Sect. VI, para. 19.) A commanding officer who has received the report of the committal of a prisoner, becomes responsible (s. 45 (5)) for having the case investigated without delay. This delay, under Rule 2, is not to exceed 48 hours without the case being reported to the general or other officer commanding the district.

If eight days elapse without the case being disposed of summarily and without a court-martial being ordered to assemble, the special report required by section 45 (1), as explained by Rule 1, must be made, and a similar report is required to be forwarded every eight days; and this report will have to be sent by the commanding officer, even though the fault of the delay lies with the general. This special report is not required on active service. If unnecessary delay occurs in convening a general or district court-martial, a report has to be made to the Commander-in-Chief (Rule 17 (C)).

When an officer is placed in arrest by his commanding officer, the commanding officer should immediately report the case to the general or other officer commanding the district or station.

With reference to the above observations, it must be recollected that in reckoning the time fixed by the Rules, Sunday, Good Friday, and Christmas Day are excluded (Rule 134 (A)), but this is not the case in reckoning the days fixed by sections of the Act, e.g. ss. 21, 45 (1).

Sub-section (1). See generally as to Arrest and Confinement, chapter IV, paras. 1—17; and Q.R., Sect. VI, paras. 19—35.

Special report. See Rule 1.

Sub-section (2). *Military custody.* This expression is here restricted by the opening words of the section to the military custody of persons charged with offences, and does not apply to persons in military custody undergoing sentence. See Q.R., Sect. VI, paras. 21, 29.

Sub-section (5). *Investigated.* Although the investigation need not be conducted by the commanding officer, the commanding officer must give the decision under s. 46 (1).

The commanding officer in this section means the commanding officer as defined by Rule 128; see Q.R., Sect. VI, para. 15.

As to the conduct of the investigation, see chapter IV, paras. 18—30; Rules 2 to 8, and notes. Q.R., Sect. VI, paras. 36—43.

Power of Commanding Officer.

Part I.

46. (1.) The commanding officer shall, upon an investigation being had of a charge made against a person subject to military law under his command of having committed an offence under this Act, dismiss the charge if he in his discretion thinks that it ought not to be proceeded with ; but where he thinks the charge ought to be proceeded with he may take steps for bringing the offender to a court-martial, or in the case of a soldier may deal with the case summarily.

s. 46.
Power of
command-
ing officer.

(2.) Where he deals with a case summarily, he may,—

(a.) Award to the offender imprisonment, with or without hard labour, for any period not exceeding fourteen days ; and

(b.) In the case of the offence of drunkenness, may order the offender to pay a fine not exceeding ten shillings, either in addition to or without imprisonment with or without hard labour ; and

(c.) In addition to or without any other punishment, may order the offender to suffer any deduction from his ordinary pay authorised by this Act to be made by the commanding officer.

(3.) Where the charge is against a soldier for drunkenness not on duty, and it is not an aggravated offence of drunkenness within the meaning of section forty-four of this Act, the commanding officer shall deal with the case summarily, unless the soldier has been guilty of drunkenness on not less than four occasions in the preceding twelve months, but nothing in this sub-section shall affect the jurisdiction of any court-martial, or the right of the soldier to be tried by a district court-martial.

(4.) In the case of absence without leave, the commanding officer may award imprisonment, with or without hard labour, for any period not exceeding twenty-one days.

Part I. (5.) Provided that where imprisonment is awarded for
s. 46. absence without leave, the commanding officer shall have regard to the number of days during which the offender has been absent, and in no case shall the term of imprisonment awarded, if exceeding seven days, exceed the term of absence.

(6.) Provided that in every case where the power of summary award by a commanding officer exceeds a sentence of seven days' imprisonment, the accused person may demand that the evidence against him should be taken on oath, and the same oath or solemn declaration as that required to be taken by witnesses before a court-martial shall be administered to each witness in such case.

(7.) An offender shall not be liable to be tried by court-martial for any offence which has been dealt with summarily by his commanding officer, and shall not be liable to be punished by his commanding officer for any offence of which he has been acquitted or convicted by a competent civil court or by court-martial.

(8.) Where a commanding officer has power to deal with a case summarily under this section, and, after hearing the evidence, considers that he may so deal with the case, he shall, unless he awards one of the minor punishments referred to in this section, ask the soldier charged whether he desires to be dealt with summarily or to be tried by a district court-martial, and if the soldier elects to be tried by a district court-martial the commanding officer shall take steps for bringing him to trial by a district court-martial but otherwise shall proceed to deal with the case summarily.

(9.) Nothing in this section shall prejudice the power of a commanding officer to award such minor punishments as he is for the time being authorised to award, so, however, that a minor punishment shall not be awarded for any offence for which imprisonment exceeding seven days is awarded.

See Chapter IV, paras. 31-38; Rules 2-7, and notes. As to meaning of *Commanding Officer*, see Rule 128, and note; Q.R., Sect. VI, para. 15.

The discretion of a commanding officer in acting under this section is regulated by Q.R., Sect. VI, paras. 39-45, and the general commanding may, within one year of the award, order him to cancel or mitigate a summary punishment. After the expiration of a year, the general must refer any case deserving of consideration to the Commander-in-Chief. (*Ib.*, para. 57.)

Sub-section (1). *In the case of a soldier.* "Soldier" includes non-commissioned officer, and "non-commissioned officer" includes acting non-commissioned officer whether in receipt of pay as such or not, s. 190. But the obligation on a commanding officer to deal summarily with a soldier charged with drunkenness does not apply to a non-commissioned officer, s. 183 (1); and the Q.R., (Sect. VI, para. 49) forbid non-commissioned officers (including acting non-commissioned officers) to be subjected to summary punishment, but a non-commissioned officer may be reprimanded.

The Act does not give a commanding officer power to punish summarily a warrant officer (see s. 182, (1)), or a person subject to military law who does not belong to Her Majesty's forces, s. 184.

Sub-section (2). *Imprisonment.* The imprisonment awarded by a commanding officer of less than seven days will be awarded in hours (Rule 6), and will as a rule be undergone in a provost prison. For form of commitment, see Rules, App. III, Form F, and as to provost prisons generally, Q.R., Sect. VI, paras. 218-242. As to commencement of term of imprisonment, see Rule 6. As a commanding officer cannot reduce a non-commissioned officer, he cannot sentence him to imprisonment, see s. 183.

(b.) For scale of fines for drunkenness, mode of recovery, &c., see Q.R., Sect. VI, paras. 63-66.

Deduction from ordinary pay. See ss. 138, 139, and definition of "day" in s. 140, and notes to those sections.

Sub-section (3). In certain cases of drunkenness a commanding officer *must* deal with them summarily, but he *may*, if he thinks fit, deal summarily with any case of drunkenness, though it is an aggravated offence or committed after four previous convictions. See above note to sub-section (1). Should, however, the number of cases of drunkenness recorded against a soldier within twelve months amount to eight, the offender should as a rule be tried, Q.R., Sect. VI, para. 59.

Sub-section (4). *Absence.* See Cl. IV, para. 33, and note to s. 138.

Sub-section (6). Formerly this paragraph only applied in cases of a charge for absence without leave exceeding seven days; but

Part I.

s. 48.

now that the power of the commanding officer has been extended to a sentence of fourteen days' imprisonment, the accused will have the right of demanding that the evidence be taken on oath, except only in the case of absence not exceeding seven days. In this case the power of award is limited to imprisonment for seven days, and the accused cannot claim to have the evidence taken on oath. At the same time there is nothing to prevent the commanding officer causing it to be taken on oath, if he thinks fit; and if requested by the accused to do so, he should usually accede to the request. See Rule 3 (B).

Sub-section (7). *Dealt with summarily.* If a commanding officer, contrary to the Q.R., (Sect. VI, para. 39) which requires him to refer to superior authority certain offences, but through inadvertence and with a full knowledge of the facts, deals with any offence summarily, the offender cannot be tried by court-martial for that offence.

Acquitted or convicted by a civil court or a court-martial. See note to s. 157. Nor can a man acquitted or convicted of an offence by a civil court or court-martial, be tried by court-martial for the same offence; ss. 157, 162 (6). Where a soldier has been acquitted or convicted or summarily punished for an offence which is substantially the same as some other offence, he ought not to be summarily punished by his commanding officer or tried for such other offence. If, e.g., he has been acquitted or convicted of or summarily punished for absence without leave, and the absence amounted to desertion, he cannot be afterwards tried for desertion. Nor can a man convicted by court-martial of an offence be afterwards sentenced by his commanding officer to stoppages for damage caused by that offence.

Sub-section (8). *By a district court.* Formerly a soldier ordered by his commanding officer to suffer imprisonment, or to pay a fine, or to suffer any deduction from his ordinary pay, could claim the right of being tried by a district court-martial instead of submitting to the award. This provision was repealed by the Army (Annual) Act of 1893, and in lieu thereof it was provided by this sub-section that where a commanding officer considers that he may deal with a case summarily, and does not award a minor punishment, he shall give the soldier the option of being dealt with summarily or of being tried by a district court-martial. In other words, the soldier can now make his choice in the first instance between the tribunal of his commanding officer and a district court-martial, instead of having a sort of appeal from the judgment of his commanding officer to a district court. If the commanding officer omits to ask the soldier the question prescribed by this sub-section, the soldier can claim his right of trial by court-martial at any time on the same day

before the hour fixed for the commitment and release of prisoners. **Part I.**
Rule 7.

Sub-section (9). *Minor punishment.* This prevents the award of a minor punishment for absence without leave exceeding seven days, if the full term of imprisonment is awarded. See Q.R., Sect. VI, paras. 47-51. Non-commissioned officers may be reprimanded, but not subjected to minor punishments. *Ib.*, para. 49.

Rule 6 (B) prohibits a commanding officer from increasing a punishment after he has once made his award, which is complete when the man has quitted his presence. This rule applies in the case of minor as well as of other punishments. But a commanding officer can at any time mitigate or remit a punishment summarily awarded. As to entry of his award or decision see Q.R., Sect. VI, para. 38.

ss. 46-47.

Courts-Martial.

47. (1.) Any officer authorised by or in pursuance of this Act to convene general and district courts-martial or either of them, also any commanding officer of a rank not below the rank of captain, also any officer of a rank not below the rank of captain when in command of two or more corps or portions of two or more corps, also on board a ship a commanding officer of any rank may, without warrant and by virtue of this Act, convene a regimental court-martial for the trial of offences committed by soldiers under his command.

(2.) Such court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than one whole year.

(3.) The convening officer shall appoint the president.

(4.) The president of a regimental court-martial shall not be under the rank of captain, unless where the court-martial is held on the line of march, or on board any ship, or unless, in the opinion of the convening officer, such opinion to be expressed in the order convening the court and to be conclusive, a captain is not, with due regard to the public service, available, in any of which cases an officer of any rank may be president.

Part I. (5.) A regimental court-martial shall not try an officer,
 s. 47. nor award the punishment of death or penal servitude, or of imprisonment in excess of forty-two days, or of discharge with ignominy; but, subject as aforesaid, and save as in this Act specially mentioned, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by a regimental court-martial.

The principal enactments which govern the convening, composition, and procedure of courts-martial are contained in this group of sections (ss. 47-56). The remainder of the law will be found in the supplemental provisions of the Act as to courts-martial (ss. 122-130), and as to evidence (ss. 163-165); and in the Rules of Procedure made under s. 70. Section 49 provides for the convening of the exceptional tribunal of a field general court-martial to try offences committed on active service, and offences against the inhabitants of, or residents in, countries beyond the seas, which it is not practicable to try by an ordinary court. Certain questions relating to jurisdiction of courts-martial are dealt with in ss. 157-162.

See chapter V for general explanation of the constitution and practice of courts-martial; and for details see the Rules of Procedure and notes. The Queen's Regulations, Sect. VI, para. 39, specify the offences which a commanding officer is empowered, without reference to superior authority, to refer to trial by regimental court-martial; and point out (paras. 71 and 75) the general rules under which different classes of offences should be dealt with by a lower or higher tribunal. As commanding officers can now award fourteen days' imprisonment for any description of offence the assembly of regimental courts-martial will be infrequent.

Sub-section (1). *Commanding officer.* This does not mean any officer having command, but the commanding officer within the meaning of s. 46 as defined by Rule 128; see Q.R., Sect. VI, para. 15. An officer, therefore, will not have power to convene a regimental court-martial, unless he either (a) holds a warrant to convene a general or district court-martial; or (b) being of the rank of captain or higher rank, is in command of detachments of two or more corps; or (c), being of the rank of captain or higher rank, is the commanding officer as defined by Rule 128, i.e., the officer whose duty it is to tell off the prisoner; or (d) is the commanding officer of soldiers on board a ship.

By soldiers under his command. A camp follower or other

person subject to military law as a soldier, but who does not belong to Her Majesty's forces, cannot be tried by regimental court-martial, s. 184. As to speedy convening of a regimental court, see Rules 16, 17.

Part I.

ss. 47-48.

Ship. This section will apply to a military court-martial, if otherwise allowed to be held on board a ship commissioned by Her Majesty. See Order in Council, para. (7) below, p. 775.

Sub-section (2). *A commission.* Consequently, an officer who had held a militia commission for eleven months, would be qualified to sit at the end of one month after he has obtained his army commission.

Sub-section (3). The convening officer cannot preside himself, or indeed be a member of the court. Section 50 (2). The president must be appointed by name.

Sub-section (4). As to the duty of the president, see Rule 59.

As to the confirmation of the sentence of a regimental court-martial, see s. 54 (1) (a).

Sub-section (5). *Officer.* This expression includes warrant and other officers holding honorary commissions (s. 190), and persons subject to military law as officers (s. 175). It must also be recollected that a warrant officer not holding an honorary commission cannot be tried by a regimental court-martial; s. 182 (1). Moreover by Q.R., Sect. VI, para. 5, it is laid down that as a rule a non-commissioned officer above the rank of corporal is not to be tried by such court.

Officers of any corps may sit on a regimental court-martial (s. 50 (1)), and the offender may be tried although no officer of the court belongs to the corps of the offender. For instance, a general officer may order a regimental court-martial to assemble, composed of officers from one or more corps, to try a staff clerk. But see Rule 20 (B) as to the non-regular forces. A qualified officer willing to sit may sit, although not under the orders of the convening officer: e.g., the commanding officer of a detached part of a corps may convene a regimental court-martial composed of officers of other corps if they are willing to serve. It has, however, been already indicated that a commanding officer will usually apply for a district court-martial, if he does not deal summarily with an offence.

48. The following rules are enacted with respect to general courts-martial and district courts-martial:

General and district courts-martial.

- (1.) A general court-martial shall be convened by Her Majesty, or some officer deriving authority to convene a general court-martial immediately or mediately from Her Majesty;

Part I.
s. 48.

- (2.) A district court-martial shall be convened by an officer authorised to convene general courts-martial, or some officer deriving authority to convene a district court-martial from an officer authorised to convene general courts-martial :
- (3.) A general court-martial shall consist in the United Kingdom, India, Malta, and Gibraltar of not less than nine, and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain :
- (4.) A district court-martial shall consist of not less than three officers, each of whom must have held a commission during not less than two whole years :
- (5.) The minimum number mentioned in this section for a general or a district court-martial shall be the legal minimum for that court-martial :
- (6.) A district court-martial shall not try a person subject to military law as an officer, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to military law, and triable by court-martial, may be tried and punished by either a general or district court-martial :
- (7.) An officer under the rank of captain shall not be a member of a court-martial for the trial of a field officer :
- (8.) Sentence of death shall not be passed on any prisoner without the concurrence of two-thirds at the least of the officers serving on the court-martial by which he is tried :
- (9.) The president of a court-martial, whether general or district, shall be appointed by order of the authority convening the court ; but he shall not be under

the rank of field officer, unless the officer convening the court is under that rank, or unless in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a field officer is not, with due regard to the public service, available, in either of which cases an officer not below the rank of captain may be the president of such court-martial; and he shall not be under the rank of captain, except in the case of a district court-martial, where in the opinion of the officer who convenes the court, such opinion to be expressed in the order convening the court, and to be conclusive, a captain is not, having due regard to the public service, available.

With respect to warrants authorising the convening of general courts-martial, see s. 122: and Chapter V, paras. 20-22.

The power to convene district courts-martial is not given specifically by warrant, but is an incident of the power to convene general courts-martial: in other words, an officer authorised to convene general courts-martial may either himself convene, or delegate to other officers power to convene district courts-martial (s. 123). As to the duty of an officer before convening a court, and speedy convening of court, see Rules 16, 17.

A convening officer can increase, but cannot diminish, the legal minimum of members of a court-martial; he must therefore take care to convene a court with not less than the minimum, otherwise the proceedings are void.

As to the eligibility of officers, and the disqualification by interest of officers to serve on courts-martial, see s. 50 and Rule 19.

Officers of any corps may serve, but the court must not (save in certain exceptional cases) be composed exclusively of officers of the same regiment or battalion. Rule 20 (A).

As to trial of a member of the militia, yeomanry, or volunteers, see Rule 20 (B).

As to the rank of the members of a general court, see subsection (3), and Rule 21. If any officer of less standing or rank than required by this section is a member of the court, the proceedings will be invalid.

Sub-section (9). The president must be appointed by name, and directly by the convening officer. The duties of the president are laid down in Rule 59.

Part I. Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial; and on the trial of the commanding officer of a corps, as many members as possible must hold or have held commands equivalent to that held by the prisoner. Q.R., Sect. VI, para. 101.

**Field
general
courts-
martial.**

49. (1.) Where a complaint is made to any officer in command of any detachment or portion of troops in any country beyond the seas, or to the commanding officer of any corps or portion of a corps on active service, or to any officer in immediate command of a body of forces on active service, that an offence has been committed by any person subject to military law,—

Then, if in the opinion of such officer it is not practicable that such offence should be tried by an ordinary general court-martial, it shall be lawful for him, although not authorised to convene general courts-martial, to convene a court-martial, in this Act referred to as a field general court-martial, for the trial of the person charged with such offence, provided as follows :

(a.) An officer in command of a detachment or portion of troops not on active service shall not convene a field general court-martial for the trial of any person unless that person is under his command, nor unless the offence with which the person is charged is an offence against the property or person of an inhabitant of, or resident in, the country in which the offence is alleged to have been committed.

(b.) A field general court-martial shall consist of not less than three officers ; unless the officer convening the same is of opinion that three officers are not available, having due regard to the public service, in which case the court-martial may consist of two officers :

(c.) The convening officer may preside, but he shall,

whenever he deems it practicable, appoint another officer as president, who may be of any rank, but shall, if practicable in the opinion of the convening officer, be not below the rank of captain. Part I.
ss. 49-50.

- (d.) Where a field general court-martial consists of less than three officers, the sentence shall not exceed such summary punishment as is allowed by this Act, or imprisonment.

(2.) Section forty-eight of this Act shall not apply to a field general court-martial, but sentence of death shall not be passed on any prisoner by a field general court-martial without the concurrence of all the members.

(3.) A field general court-martial may, notwithstanding the restrictions enacted by this Act in respect of the trial by court-martial of civil offences within the meaning of this Act, try any person subject to military law who is under the command of the convening officer and is charged with any such offence as is mentioned in this section, and may award for such offence any sentence which a general court-martial is competent to award for such offence : Provided always, that no sentence of any such court-martial shall be executed until confirmed as provided by this Act.

The object of this section is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the service, to try such offences by an ordinary general court-martial. A field general court-martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country. See Rules 104-122 and notes.

Sub-section (3). *Restrictions enacted by this Act.* See s. 41 (a). As to confirmation of sentence, s. 54 (1) (d).

50. (1.) The officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps. Courts martial in general.

(2.) The officer who convened a court-martial shall not, (M.L.)

Part I. save as is otherwise expressly provided by this Act, sit on
ss. 50-51. that court-martial.

(3.) Any of the following persons, that is to say—A prosecutor or witness for the prosecution of any prisoner, or the commanding officer of the prisoner within the meaning of the provisions of this Act which relate to dealing with a case summarily, or the officer who investigated the charges on which a prisoner is arraigned, shall not, save in the case of a field general court-martial, sit on the court-martial for the trial of such prisoner, nor shall he act as judge advocate at such court-martial.

Sub-section (1). If an officer is competent to sit on a court-martial, he is *qualified* to sit on any court of the same description, irrespective of his *obligation* to sit. A convening officer may, therefore, by arrangement, avail himself of the services of an officer not under his orders. A general or district court must, as far as seems to the convening officer practicable, be composed of officers of different corps, Rule 20 (A); and see as to the trial of a member of the militia, yeomanry, or volunteers, Rule 20 (B). See note to s. 47 (5). The definition of corps in s. 190 (15) includes the Royal Marines.

Sub-section (2). *Save as otherwise provided.* See s. 49 (1), (c), which enables the convening officer of a field general court-martial to preside, if it is impracticable to appoint another officer.

Sub-section (3). A member of the court or a judge advocate is a competent witness for the defence, but not for the prosecution. In the case of a field general court-martial, an officer is disqualified by Rule 105 (D) for serving, if he is the prosecutor, or a witness for the prosecution.

Within the meaning, &c., i.e., of s. 46 and Rule 128.

Investigated the charges. The officer who investigated is usually the commanding officer of the prisoner; when he is not, he is equally excluded by these words. He has been defined as meaning the officer who in a judicial capacity sifted the evidence in such a way as to acquaint him with, and lead him to form a conclusion upon, the merits of the case, and does not include an officer who merely took down the evidence, or through whose hands the charges passed merely formally or ministerially. See also Rule 19 (B) iii, as to exclusion of member of court of inquiry.

Challenges by prisoner. 51. (1.) A prisoner about to be tried by any court-martial may object, for any reasonable cause, to any member of the court, including the president, whether

appointed to serve thereon originally or to fill a vacancy caused by the retirement of an officer objected to, so that the court may be constituted of officers to whom the prisoner makes no reasonable objection.

(2.) Every objection made by a prisoner to any officer shall be submitted to the other officers appointed to form the court.

(3.) If the objection is to the president, such objection, if allowed by one-third or more of the other officers appointed to form the court shall be allowed, and the court shall adjourn for the purpose of the appointment of another president.

(4.) If an objection to the president is allowed, the authority convening the court shall appoint another president, subject to the same right of the prisoner to object.

(5.) If the objection is to a member other than the president, and is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the prisoner to object.

(6.) In order to enable a prisoner to avail himself of his privilege of objecting to any officer, the names of the officers appointed to form the court shall be read over in the hearing of the prisoner on their first assembling, and before they are sworn, and he shall be asked whether he objects to any of such officers, and a like question shall be repeated in respect of any officer appointed to serve in lieu of a retiring officer.

It will be observed that this section gives the prisoner an absolute right to a new president, if the prisoner's challenge of the president is allowed by one-third of the officers appointed to form the court. A challenge of the president must be dealt with first.

As to challenges generally see Rule 25 and note ; as to adjourning for the purpose of appointing fresh members, and the power to convene another court, Rule 18 ; and as to challenges where a

Part I. court is being sworn to try several prisoners, Rule 71 (A) (B). In
ss. 51-52. the case of a field general court-martial, an objection to any
 officer will be allowed, if any member of the court thinks the
 objection reasonable, Rule 109 (B).

Adminis-
 tration of
 oaths.

52. (1.) An oath shall be administered by the pre-
 scribed person to every member of every court-martial
 before the commencement of the trial in the following
 form ; that is to say,

"You do swear, that you will well
 "and truly try the prisoner [or prisoners] before the court
 "according to the evidence, and that you will duly
 "administer justice according to the Army Act now in
 "force, without partiality, favour, or affection, and you do
 "further swear that you will not divulge the sentence of
 "the court until it is duly confirmed, and you do further
 "swear that you will not on any account at any time
 "whatsoever disclose or discover the vote or opinion of
 "any particular member of this court-martial, unless
 "thereunto required in due course of law. So help you
 "GOD."

(2.) An oath in the prescribed form or forms shall be
 administered by the prescribed person to the judge
 advocate or person officiating as judge advocate (if any),
 and also to every officer in attendance on a court-martial
 for the purpose of instruction (if any), and also to every
 shorthand writer (if any), in attendance on the court-
 martial.

(3.) Every witness before a court-martial shall be
 examined on oath, which the president or other pre-
 scribed person shall administer in the prescribed form.

See 32 & 33
 Vict. cap.
 68, s. 4.

(4.) If a person by this Act required either as a
 member of, or person in attendance on, or witness before
 a court-martial, or otherwise in respect of a court-martial,
 to take an oath, objects to take an oath, or is objected to
 as incompetent to take an oath, the court, if satisfied of
 the sincerity of the objection, or, where the competence of

the person to take an oath is objected to, of the oath Part I.
having no binding effect on the conscience of such person, ss. 52-53.
shall permit such person instead of being sworn to make
a solemn declaration in the prescribed form, and for the
purposes of this Act such solemn declaration shall be
deemed to be an oath.

Sub-section (1). *By the prescribed person.* This person is prescribed by Rule 26. The oath taken by members of the court binds them in their capacity of jurors to find a true verdict according to the evidence (discarding from their minds any private knowledge or information they may happen to possess), and in their capacity of judges to duly administer justice; as well as to keep secret the votes of members, and (until confirmed) the sentence of the court.

Sub-section (2). The forms of oaths for judge advocate, for officer attending for instruction, for shorthand writer and interpreter, and the person to administer them, are prescribed by Rules 27-30.

Sub-section (3). The form of oath for a witness, and the person to administer it, are prescribed by Rule 81, and in the case of a field general court-martial by Rule 110.

Sub-section (4). The form of solemn declaration is prescribed by Rule 28. As to swearing a person according to his own religion, see Rule 30; and in the case of a field general court-martial, Rule 114.

The practice followed in the law courts of any colony or foreign country as to the mode of swearing or taking the affirmation of natives should usually be adopted.

For punishment of perjury committed by a witness subject to military law, see s. 29; by a civilian, see s. 126.

53. (1.) If a court-martial after the commencement of Procedure. the trial is, by death or otherwise, reduced below the legal minimum, it shall be dissolved.

(2.) If after the commencement of the trial the president dies or is otherwise unable to attend, and the court is not reduced below the legal minimum, the convening authority may appoint the senior member of the court, if of sufficient rank, to be president, and the trial shall proceed accordingly; but if he is not of sufficient rank the court shall be dissolved.

(3.) If, on account of the illness of the prisoner before

Part I. the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

s. 53.

(4.) Where a court-martial is dissolved under the foregoing provisions of this section the prisoner may be tried again.

(5.) The president of any court-martial may, on any deliberation amongst the members, cause the court to be cleared of all other persons.

(6.) The court may adjourn from time to time.

(7.) The court may also, where necessary, view any place.

(8.) In the case of an equality of votes on the finding the prisoner shall be deemed to be acquitted. In the case of an equality of votes on the sentence, or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote.

(9.) When a court-martial recommends a prisoner to mercy, such recommendation shall be attached to and form part of the proceedings of the court, and shall be promulgated and communicated to the prisoner, together with the finding and sentence.

Sub-section (1). In the event of the dissolution of the court before a finding of acquittal, or a finding of guilty and sentence thereon, the prisoner may be tried again, sub-section (4); Rule 66 (B): but it may frequently be inexpedient to convene a fresh court for such trial, especially where the prisoner has been for some time under arrest or in confinement.

Sub-section (2). *Is unable to attend.* The court cannot proceed at all without a president, and in the event of his absence must adjourn till he can attend, or till his place is supplied by the convening authority. See Rule 65 (B).

Sub-section (3). *Illness of the prisoner.* A medical certificate should always where possible be obtained, stating that the illness of the prisoner renders his presence in court dangerous to himself or others, and also the time when, in the opinion of the medical officer, the prisoner will be able to be present.

Impossible to continue. This means to continue within a reasonable time having regard to all the circumstances.

Sub-section (5). *Cause the court to be cleared.* If more convenient the court may withdraw for deliberation. See Rule 63.

Sub-section (6). *Adjourn.* See as to adjournment, Rule 65.

Sub-section (7). *View.* The convening officer cannot depute so many members as he might think fit to view a place, as the view must be in open court (Rule 63 (B)), i.e., in the presence of all the members, the prosecutor, and prisoner. **ss. 53-54.**

Sub-section (8). *Acquitted.* In such a case the acquittal, if it relates to all the charges, must be at once pronounced in open court, and the prisoner must be discharged. Section 54 (3).

Sub-section (9). As a recommendation to mercy is part of the proceedings, any expression of opinion in it in relation to the finding must be read with and as part of the finding.

Where, in a recommendation to mercy, a court expressed an opinion inconsistent with the guilt of the prisoner, for instance, where the charge was for striking a superior, and the court stated their opinion that the prisoner "did not intend to strike," it was held that it must be treated as an acquittal, the intent being an element of the offence.

54. (1.) The following authorities shall have power to confirm the findings and sentences of court-martial; that is to say, Confirmation, revision, and approval of sentences.

- (a.) In the case of a regimental court-martial, the convening officer or officer having authority to convene such a court-martial at the date of the submission of the finding and sentence thereof :
- (b.) In the case of a general court-martial, Her Majesty, or some officer deriving authority to confirm the findings and sentences of general courts-martial immediately or mediately from Her Majesty :
- (c.) In the case of a district court-martial, an officer authorised to convene general courts-martial, or some officer deriving authority to confirm the findings and sentences of district courts-martial from an officer authorised to convene general courts-martial :
- (d.) In the case of a field general court-martial, an officer authorised to confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the detachment

Part I.

s. 54.

or portion of troops under the command of the convening officer forms part, or where the offence was committed on active service, any such officer as may under the rules made in pursuance of this Act be authorised to confirm the findings and sentences of the field general court-martial awarding the sentence: Provided that a sentence of death or penal servitude awarded by a field general court-martial shall not be carried into effect unless or until it has been confirmed by the general or field officer commanding the force with which the prisoner is present at the date of his sentence.

(2.) The authority having power to confirm the finding and sentence of a court-martial may send back such finding and sentence, or either of them, for revision once, but not more than once, and it shall not be lawful for the court on any revision to receive any additional evidence; and where the finding only is sent back for revision, the court shall have power without any direction to revise the sentence also. In no case shall the authority recommend the increase of a sentence, nor shall the court-martial on revisal of the sentence, either in obedience to the recommendation of an authority, or for any other reason, have the power to increase the sentence awarded.

(3.) The finding of acquittal, whether on all or some of the offences with which the prisoner is charged, shall not require confirmation or be subject to be revised, and if it relates to the whole of the offences shall be pronounced at once in open court, and the prisoner shall be discharged.

(4.) A member of a court-martial shall not have authority to confirm the finding or sentence of that court-martial, and where a member of a court-martial becomes confirming officer he shall refer the finding and sentence

of the court-martial to a superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall, for the purposes of this Act, be deemed to be in that instance the confirming authority; and where a court-martial is held in a colony, and there is no such superior authority in that colony, the Governor of that colony shall have power to confirm the finding and sentence of such court-martial in like manner in all respects as if he were such superior authority as above mentioned. Provided that where a member of a field general court-martial trying a prisoner would but for his being a member of the court have power to confirm the finding and sentence of the court, and is of opinion that it is not practicable, having due regard to the public service, to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(5.) An officer having authority to confirm the finding and sentence of a court-martial may withhold his confirmation, wholly or partly, and refer such finding and sentence, or the part not confirmed, to any superior authority competent to confirm the findings and sentences of the like description of courts-martial, and that authority shall for the purpose of this Act be deemed to be in that instance and to the extent of such reference the confirming authority.

(6.) Subject to the provisions of this Act with respect to the finding of acquittal, the finding and sentence of a court-martial shall not be valid except in so far as the same may be confirmed by an authority authorised to confirm the same.

(7.) Sentence of death when passed in a colony shall not, unless passed in respect of an offence committed on active service, be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor of the colony.

Part I. (8.) Sentence of death when passed in India in respect
s. 54. of the offence of treason or murder shall not (except where the offence was committed on active service) be carried into effect unless, in addition to the confirmation otherwise required by this Act, it is approved by the Governor-General.

(9.) When a person subject to military law is convicted of manslaughter or rape, or any other civil offence under the section of this Act relating to the trial by court-martial of civil offences, and is sentenced to penal servitude, such sentence shall not be carried into execution unless, in addition to the confirmation otherwise required by this Act, it is approved, if the offender has been tried in India, by the Governor-General, or if he has been tried in a colony, by the Governor of the colony.

As to confirmation and revision generally, see Chapter V, paras. 89-97, and as to field general court-martial, Rule 119 and note. Confirmation is complete when the proceedings are promulgated.

If proceedings are confirmed in error by an officer not having power to confirm, his act and the subsequent promulgation are null, and it is open to the proper authority to confirm.

Sub-sections (2) and (3). The effect is that revision, except for curing legal defects in the finding or sentence, can only be used for acquitting a prisoner or mitigating the sentence; inasmuch as revision can only be ordered in case of conviction, and if it is ordered the sentence cannot be increased. See Rule 51 and note.

The Act, by declaring that an acquittal on a charge shall not require confirmation, makes the decision of the court on that charge, both as regards the facts and the law, absolute. In such a case the confirming officer must not annex to the proceedings any remarks on the conclusion of the court: at the same time, if he is of opinion that the court has been guided by principles detrimental to the discipline of the army, or that otherwise the case requires notice, he should report accordingly to superior military authority. See Rule 51 (A) and Q.R., Sect. VI, para. 113.

Where a finding on being sent back for revision is varied in any material respect by the court, a new sentence (not, however, necessarily differing from the original sentence) must be passed, for on the original finding being revoked, the sentence based upon

it falls. Where a new sentence is not passed, the prisoner is not legally under any sentence. Part I.
ss. 55-56.

Sub-section (4). See note to Rule 96. *Colony*. See the definition, which includes Cyprus, in s. 190.

Sub-section (5). See note to Rule 96 (A).

Sub-section (6). The result of this sub-section is that if a finding of conviction is not confirmed it is invalid (see also Rule 120 (A), and Chapter V, para. 5), consequently there is no conviction, and the prisoner has not been convicted by a court-martial for the purpose either of any subsequent trial or of any entry in the defaulters' book. See s. 157, and Rule 56.

It has been ruled that confirmation ought to be withheld in the following cases:—

Where the provisions of s. 47 in the case of a regimental, or those of s. 48 in that of a general or district court-martial, and in either case those of ss. 50, 51, or 52 have been contravened.

Where evidence legally inadmissible has been admitted against a prisoner, and without such evidence a conviction is not justified.

Where a prisoner has been unduly restricted in his defence.

Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the court could legally have convicted.

Where a special finding of guilty fails to disclose an offence of which the court might have legally convicted.

Where the charge is bad in law even when the prisoner has pleaded guilty.

Where there has been such a deviation from the rules of procedure that "injustice has been done to the prisoner."

Sub-section (7). *Active service*. See the definition in s. 189.

Sub-sections (8) and (9). *India*. See the definition in s. 190.

Where an offender was tried within the limits of a presidency, the power of approval was formerly vested in the governor of the presidency, but this power was abolished by the Madras and Bombay Armies Act, 1893.

Civil offence. See s. 41.

55. [Section 55 (Summary court-martial) was repealed by s. 9 of the Army Annual Act, 1893. See note to s. 49 above.]

56. (1.) A prisoner charged before a court-martial with stealing may be found guilty of embezzlement or of fraudulently misapplying money or property. Conviction of less offence permissible on charge of greater.

(2.) A prisoner charged before a court-martial with em-

Part I. bezzlement may be found guilty of stealing or fraudulently misapplying money or property.
s. 56.

(3.) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4.) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(5.) A prisoner charged before a court-martial with any other offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

This section will often prevent a failure of justice by permitting a prisoner charged with one of the offences mentioned in the section to be found guilty of a cognate offence.

Moreover, a man charged with an offence committed under circumstances involving a higher degree of punishment may be found guilty of the same offence under circumstances involving a less degree of punishment.

For example, a man charged with striking his superior officer in the execution of his office may be convicted of striking his superior officer; and a man charged with an offence committed on active service may be found guilty of the same offence committed not on active service; or, again, a man charged with wilfully allowing the escape of a prisoner may be found guilty of allowing his escape without reasonable excuse. The converse, of course, is not allowed; that is to say, a prisoner charged with an offence cannot be convicted of a greater offence of the same class.

In practice it will usually be expedient to prefer alternative charges, one charging the greater and the other the less offence, rather than to rely on this section. See Rules, Appendix I, note as to use of Forms of Charges (6).

But except in the cases specified in this section a court has no power to find a prisoner guilty of any offence except that with which he is charged. A court, however, may (as allowed by Rule 44 (C)) find a prisoner guilty of a charge with the exception of certain words or with certain immaterial variations, and this finding will be valid so long as in its reduced or varied form it discloses an offence under the Act.

EXECUTION OF SENTENCE.

Part I.

57. (1.) The confirming authority may, when confirming the sentence of any court-martial, mitigate or remit the punishment thereby awarded, or commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as is in this Act mentioned. The confirming authority may also suspend for such time as seems expedient the execution of a sentence.

s. 57.
Commuta-
tion and
remission of
sentences.

(2.) When a sentence passed by a court-martial has been confirmed, the following authorities shall have power to mitigate or remit the punishment thereby awarded, or to commute such punishment for any less punishment or punishments to which the offender might have been sentenced by the said court-martial, or if such punishment is death awarded for the offence of murder, then for penal servitude or such less punishment as in this Act mentioned ; that is to say,

(a.) As respects persons undergoing sentence in any place whatever, Her Majesty or the Commander-in-Chief or the officer commanding the district or station where the prisoner subject to such punishment may for the time be, or any prescribed officer ; and

(b.) As respects persons undergoing sentences in India the Commander-in-Chief of the forces in India ; and

(c.) As respects persons undergoing sentences in any colony, the officer commanding the forces in that colony ; and

(d.) As respects persons undergoing sentences in any place not in the United Kingdom, India, or a colony, the officer commanding the forces in such place :

Part I. (3.) Provided that the power given by this section shall
s. 57. not be exercised by an officer holding a command inferior to that of the authority confirming the sentence, unless such officer is authorised by such confirming authority or other superior military authority to exercise such power.

(4.) An authority having power under this section to mitigate, remit, or commute any punishment may, if it seem fit, do all or any of those things in respect of a person subject to such punishment.

(5.) The provisions of this Act with respect to an original sentence of penal servitude or imprisonment shall apply to a sentence of penal servitude or imprisonment imposed by way of commutation.

See Chapter V, para. 98, and as to diminution of sentence for offences in several charges, where the finding on one or more of them is not confirmed, see Rule 54. See also as to duty of confirming officer, Q.R., Sect. VI, paras. 110-114.

Mitigation is the awarding of a less amount of the same species of punishment, as, for example, by reducing the length of imprisonment to which an offender has been sentenced; and is in effect equivalent to a remission of part of the sentence.

Remission may be remission of the whole or of part of the sentence; thus a sentence of imprisonment with hard labour may be remitted altogether, or a portion of the term, or the hard labour may be remitted. As to notification of remission of imprisonment, Q.R., Sect. VI, para. 200.

Commutation is changing the description of punishment by awarding a less punishment—as imprisonment in lieu of penal servitude—or dismissal in lieu of cashiering.

Suspension of the execution of a sentence, which can only take effect after confirmation, does not postpone the commencement of any term of penal servitude or imprisonment.

The powers conferred by this section may be exercised by the confirming authority, as such, under (1), only when confirming the sentence: after promulgation, when the confirmation is complete, the power of the confirming authority in that capacity ceases, and the above powers can only be exercised under (2), *i.e.*, by Her Majesty, the Commander-in-Chief, and the officer commanding the district, and also abroad by the authorities mentioned in sub-section (2) (b) (c) (d). Under Rule 125 (C) the general commanding the forces in Ireland, as respects a prisoner in Ireland, and the Adju-

tant-General as respects all prisoners can also exercise these powers; but they cannot be exercised by any officer inferior to the confirming authority without leave from that authority.

Part I.
—
ss. 57-58.

The confirming authority as such cannot commute a punishment into general service. See s. 83 (7) and note.

For definitions of India and colony, see s. 190.

The section allows an authority to commute a punishment to any one other punishment below it in the scale that is applicable to the offence. But partial commutation by the authority of any one punishment by the substitution for a portion thereof of another punishment is illegal. Thus, where in a case of "losing by neglect" a court passed a sentence of 84 days' imprisonment, but omitted to pass a sentence of stoppage, it was ruled that the confirming authority could not commute a portion of the imprisonment to the stoppages which the court might have awarded.

The penal servitude or imprisonment under commutation, must commence on the date of the original sentence, even though not one of penal servitude or imprisonment, as the case may be.

Sub-section (2) (b). Formerly the Commander-in-Chief of the forces in a presidency could exercise the powers of this section as respects persons undergoing sentences in the presidency, but the office of provincial Commander-in-Chief was abolished by the Madras and Bombay Armies Act, 1893.

58. When a person subject to military law is convicted by a court-martial, whether in the United Kingdom or elsewhere, either within or without Her Majesty's dominions, and is sentenced to penal servitude, such conviction and sentence shall be of the same effect as if such person (in this Act referred to as a military convict) had been convicted in the United Kingdom of an offence punishable by penal servitude and sentenced to penal servitude by a competent civil court, and all enactments relating to a person sentenced to penal servitude by a competent civil court shall, so far as circumstances admit, apply accordingly.

Effect of
sentence of
penal servi-
tude.

Sections 58 to 62 relate to penal servitude, and provide separately for the execution of sentences of penal servitude passed in the United Kingdom, in India and the colonies, and in foreign countries.

Before the passing of the Army Discipline and Regulation Act, 1879, a convict sentenced to penal servitude in India or a colony might be compelled to undergo a portion of his sentence in the

Part I. country where he was sentenced. The effect of these sections and of the proviso to s. 131 is, that wherever a sentence of penal servitude is passed, the convict (subject to the exceptions mentioned in the above proviso and the note to s. 131), must, as soon as practicable, be brought to the United Kingdom to undergo his sentence in some prison in which English penal servitude prisoners can be confined.

ss. 58-59.

These sections further enable a convict to be discharged by certain military authorities at any time before he reaches his penal servitude prison, and also provide for his conveyance in custody from the place where he is sentenced to penal servitude, however distant, until his arrival in the prison where he is to undergo his sentence.

In the United Kingdom, though he may be kept in military custody till sent to a penal servitude prison, his period of military custody will necessarily be short, as his commanding officer or other military authority should commit him, without unnecessary delay after the promulgation of the sentence, to some public prison. He then comes under the jurisdiction of the Home Secretary, and is out of the jurisdiction of the military authorities.

Abroad, on the other hand, a soldier under sentence of penal servitude, must necessarily be kept for some length of time in intermediate custody, and may be so kept in military custody or in civil custody, and may be moved from one to the other as occasion requires. When in civil custody he must be kept in an "authorised prison" (s. 62), unless it is not practicable, in which case (s. 60) (5) he may be confined temporarily in any civil prison with the assent of the authority having jurisdiction over the prison.

For commencement of term of penal servitude, see s. 68.

The provisions of the Act will continue to apply to a person sentenced to penal servitude during the term of his sentence, though he has been discharged or dismissed from Her Majesty's service; s. 158.

Execution
of sentences
of penal
servitude
passed in
the United
Kingdom.

59. (1.) Where a sentence of penal servitude is passed by a court-martial in the United Kingdom, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law, and until so transferred shall be kept in military custody.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.

3.) At any time before his arrival at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict. Part I.
ss. 59-60.

(4.) Any one or more of the following officers shall be the committing authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ;
- (c.) The commanding officer of the military convict ; and
- (d.) Any other prescribed officer.

(5.) Any one of the following officers shall be the discharging authority for the purposes of this section, namely,—

- (a.) The Commander-in-Chief ;
- (b.) The Adjutant-General ; and
- (c.) Any other prescribed officer.

Sub-section (1). *Penal servitude prison*. For definition see s. 62.

Sub-sections (4), (5). *Commanding Officer*. This means the commanding officer as defined by Rule 128. See Q.R., Section VI, para. 15.

Prescribed officer. The officer commanding the military district or station where the military convict or military prisoner may for the time being be, and when the convict or prisoner is in Ireland, the General commanding the forces in Ireland is prescribed as the committing authority by Rule 125 (A) for the purposes of this section, and also of ss. 60, 61, 64, and 65.

For general provisions as to orders of the Commander-in-Chief, Adjutant-General, and general officers, see s. 172.

For form of order of commitment, see Rules, App. III, Form A ; and see generally Q.R., Section VI, paras. 165-172.

The military authorities cannot discharge a military convict after he has reached a penal servitude prison.

60. (1.) Where a sentence of penal servitude is passed by a court-martial in India or any colony, the military convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison to undergo his sentence according to law. Execution of sentences of penal servitude passed in India or a colony.

(2.) The order of the committing authority (hereafter in (M.L.)

Part I. this section mentioned) shall be a sufficient warrant for his transfer to a penal servitude prison.
s. 60.

(3.) The military convict during the period which intervenes between the passing of his sentence and his arrival at the penal servitude prison (in this section referred to as the term of his intermediate custody) shall be deemed to be in legal custody.

(4.) The military convict during his term of intermediate custody may be kept in military custody or in civil custody, or partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody and from civil custody to military custody as occasion may require, and may during his conveyance from place to place, or when on board ship or otherwise, be subjected to such restraint as is necessary for his detention and removal.

(5.) "Civil custody," for the purposes of this section, means custody in any authorised prison; nevertheless, where it is not practicable to place the military convict in an authorised prison, he may, by way of civil custody, be confined temporarily in any other prison with the assent of the authority having jurisdiction over that prison.

(6.) The military convict whilst in any prison in which he may legally be placed may be dealt with, in respect of hard labour and otherwise, according to the rules of that prison.

(7.) An order of the removing authority (hereafter in this section mentioned) shall be a sufficient authority for the transfer of the military convict from military custody to civil custody, and from civil custody to military custody, and his removal from place to place, and for his detention in civil custody, and generally for dealing with such convict in such manner as may be thought expedient during the term of his intermediate custody.

(8.) The removing authority during the term of the intermediate custody of the military convict may from time to time by order provide for his being brought before

a court-martial, or any civil court, either as a witness or r trial or otherwise ; and an order of such authority shall be a sufficient warrant for the delivering him into military custody, and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

(9.) Any directions of the removing authority relating to the mode in which the military convict is to be dealt with during the term of his intermediate custody may be contained in the same order or in several orders ; and if the orders are more than one, they may be by different officers and at different times.

(10.) At any time before the military convict arrives at a penal servitude prison, the discharging authority (hereafter in this section mentioned) may by order discharge the military convict.

(11.) Any one or more of the following officers shall be the committing authority for the purposes of this section ; that is to say,

(a.) In India—

(i.) The Commander-in-Chief of the forces in India ;

(ii.) * * * *

(iii.) The Adjutant-General in India ;

(iv.) * * * *

(b.) In a colony, the officer commanding the forces in that colony ; and

(c.) In any case, whether in India or in a colony, the prescribed officer.

(12.) Any one or more of the following officers shall be the removing authority for the purposes of this section ; that is to say,

(a.) Any officer in this section named as the committing authority ; also

(M.L.)

Part I,
ss. 60-61. (b.) The officer commanding the military district or station where the military convict may for the time being be ; also

(c.) Any other prescribed officer.

(13.) Any of the following officers shall be the discharging authority for the purposes of this section ; that is to say,

(a.) The officer who confirmed the sentence ; also

(b.) Any officer in this section named as the committing authority ; also

(c.) Any other prescribed officer.

Sub-section (1). For definition of India and colony, see s. 190 ; but it must be recollected that for the purpose of this section and the other provisions relating to the execution of sentences of penal servitude, the Channel Islands and the Isle of Man are deemed to be colonies ; section 187 (2).

As to removal to United Kingdom of prisoners sentenced to penal servitude in India or a colony, see the proviso to s. 131.

Sub-section (5). For definition of *authorised prison*, see s. 62 (2).

Sub-section (8). The statute 43 Geo. III, c. 140, empowers any of Her Majesty's judges to award a writ of *habeas corpus* for bringing any prisoner detained in any prison in England (whether subject to military law or not) before a court-martial for the purpose of giving evidence ; and s. 9 of 16 and 17 Vict., c. 30, empowers any of Her Majesty's judges or a Secretary of State to issue a warrant or order for the like purpose, and also for the purpose of bringing up a prisoner to give evidence before a civil court. This sub-section enables an offender sentenced to penal servitude to be brought up by order of the military authority either before a court-martial or a civil court to give evidence, during the interval between the passing of the sentence and his arrival at the penal servitude prison.

Prescribed officer. See note to s. 59.

For general provisions as to orders of Commander-in-Chief and other authorities, see s. 172.

For form of order of commitment, see Rules, App. III, Form B ; and see also Q. R., Sect. VI, paras. 165-172.

Execution
of sentences
of penal

61. (1.) Where a sentence of penal servitude is passed by a court-martial in any foreign country, the military

convict on whom such sentence has been passed shall, as soon as practicable, be transferred to a penal servitude prison for the purpose of undergoing his sentence according to law, and, until so transferred, may be kept in military custody.

Part I.
s. 61.
servitude
passed in a
foreign
country.

(2.) The order of the committing authority (hereafter in this section mentioned) shall be a sufficient warrant for the transfer of the military convict to a penal servitude prison.

(3.) If at any time before his arrival in the United Kingdom the military convict is brought into India or any colony, he may be dealt with by the competent military authority in India or such colony in the same manner in all respects as if he had been there sentenced by court-martial to penal servitude.

(4.) The military convict may at any time before he arrives at any place in the United Kingdom, India, or any colony, be discharged by the discharging authority (hereafter in this section mentioned) having jurisdiction in any place where the military convict may for the time being be.

(5.) Any one or more of the following officers shall be the committing authority for the purposes of this section ; that is to say,

(a) The officer commanding the army or force with which the military convict was serving at the time of his being sentenced ;

(b.) The officer who confirmed the sentence of the court ;

(c.) Any other prescribed officer ;

(6.) Any committing authority under this section shall also be the discharging authority for the purposes of this section.

Sub-section (1). *Foreign country.* For definition see s. 190.

Sub-section (3). See s. 131, and for definition of India and colony see s. 190; see also s. 187 (2) as to Isle of Man and Channel Islands.

Part I. *Prescribed officer.* See note to s. 59.

ss. 61-63. For general provisions as to orders of Commander-in-Chief and other authorities see s. 172.

For form of order of commitment, see Rules, App. III, Form B; and see also Q.R., Sect. VI, paras. 165-172.

General provisions applicable to penal servitude.

62. (1.) A penal servitude prison for the purposes of the provisions of this Act relating to penal servitude means any prison or place in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily.

(2.) An "authorised prison" for the purposes of the provisions of this Act relating to penal servitude means any prison in India or any colony which the Governor-General of India or the Governor of such colony may, with the concurrence of a Secretary of State, have appointed as a prison in which military convicts may, during the period of their intermediate custody, be confined.

(3.) After a military convict has arrived at a penal servitude prison to undergo his sentence, he shall be dealt with in the like manner as an ordinary civil prisoner under sentence of penal servitude.

Sub-section (1). See proviso to s. 131.

Execution of sentences of imprisonment.

63. (1.) Where a sentence of imprisonment is passed by court-martial or a commanding officer, the person on whom such sentence has been passed (in the provisions of this Act relating to imprisonment referred to as a military prisoner) shall undergo the term of his imprisonment either in military custody or in a public prison, or partly in one way and partly in the other.

(2.) The order of the committing authority hereafter mentioned shall be a sufficient warrant for the transfer of a military prisoner to a public prison.

(3.) A military prisoner while in a public prison shall be confined, kept to hard labour, and otherwise dealt with in the like manner as an ordinary prisoner under a like

sentence of imprisonment; and where the hospital or place for the reception of sick prisoners in such prison is detached from the prison may be detained in such hospital or place, and conveyed to and from the same as circumstances require. Part I.
s. 66.

(4.) A military prisoner during his conveyance from place to place, or when on board ship or otherwise, may be subjected to such restraint as is necessary for his detention and removal.

(5.) The discharging authority hereafter mentioned may, at any time during the period of a military prisoner undergoing his imprisonment, by order discharge the prisoner.

(6.) The committing authority or any other prescribed authority may at any time by order remove a military prisoner from one public prison to another, so that he be not removed from a prison in the United Kingdom to a prison elsewhere.

(7.) The removing authority hereafter mentioned may at any time during the period of the military prisoner undergoing his sentence in a public prison, from time to time by order provide for his being brought before a court-martial, or any civil court, either as a witness, or for trial or otherwise, and an order of such authority shall be a sufficient warrant for delivering him into military custody and detaining him in custody until he can be returned and for returning him to the place from whence he is brought, or to such other place as may be determined by the removing authority.

Sections 63 to 66 provide for the execution of sentences of imprisonment.

The effect of the provisions is that a prisoner under sentence of imprisonment, if sentenced in the United Kingdom, may be kept either in military custody or in a public prison—that is to say, any prison in the United Kingdom in which prisoners can be confined under a sentence of a civil court: or in a military prison, that is to say, any building set apart as such by the Secretary of State under s 183.

Part I.

s. 68.

If sentenced in India or a colony, he may be kept in military custody, or in some "authorised prison" in the country where sentenced, *i.e.*, a civil prison appointed as a prison for military prisoners, with the concurrence of the Secretary of State, if in India by the Governor-General, and if in a colony by the Governor of the colony (s. 65 (2)); or in a military prison—that is to say, any building set apart as such in India by the Governor-General, and in a colony by the Secretary of State, under s. 133.

If sentenced in a foreign country, then if and as soon as he is brought into the United Kingdom, India, or any colony, the provisions of the Act apply as if he had been sentenced in the United Kingdom, in India, or a colony, as the case may be: s. 66. Q.R., Sect. VI, para. 172.

A prisoner may be removed from a prison out of the United Kingdom to a prison in the United Kingdom, and from one public prison to another in the United Kingdom (sub-section (6)); but he cannot be removed from a prison in the United Kingdom to a prison elsewhere (sub-section (6)); and if he has remained in military custody and not been committed to a prison in the United Kingdom, and is removed from the United Kingdom, he cannot be committed to a prison elsewhere. Prisoners, therefore, in the United Kingdom, if required to be removed, can only be removed under s. 67. A prisoner sentenced in India or a colony may be removed to a military prison wherever situate if allowed by regulation (see Rule 129), but can only be removed to an "authorised prison" in another colony if such prison has been "prescribed" for this purpose by a rule (s. 65 (1) (c), Rule 129). With reference to these sections, it must be recollected that under s. 187 (2) the Isle of Man and Channel Islands, and under s. 190, Cyprus, are for these purposes colonies.

Where a regiment moves from one colony to another and takes its prisoners with it, they cannot be committed under their old sentence to a prison at the place of destination of the regiment unless such prison has been prescribed, *i.e.*, allowed by Rule, or is a military prison, and in the latter case the regulations on the subject must be observed.

As to a prisoner sentenced to more than twelve months' imprisonment in India or a colony being sent home unless the court or confirming authority has for special reasons otherwise ordered; or unless he is a person to whom a declaration of the Secretary of State, made under that section is applicable, see s. 131.

Sub-section (1). *Military custody.* This expression includes provost prisons, and a prisoner may be sentenced to hard labour in them; but a prisoner under sentence exceeding the limit for the time being prescribed for sentences to be passed in cells or in

provost prisons, must only be committed to a provost prison, pending his commitment to a public prison. Q.R., Sect. VI, para. 173, and see paras. 218-242. Part I.
—
ss. 63-64.

Sub-section (5). *Discharging authority*. It will be observed that the discharging authority under this section will sometimes have no power to remit the sentence on the prisoner under s. 57. It is desirable that a prisoner should not be discharged before the expiration of his sentence without his sentence being remitted. An officer, therefore, who has power to discharge a prisoner, but not to remit the sentence, should apply to some authority having power to remit the sentence, and obtain that remission before he orders the discharge of the prisoner. If, in a case of necessity, he discharges the prisoner before making such application, he should apply immediately for the remission of the sentence.

An escaped prisoner may, when captured, be recommitted to prison to undergo the remainder of his sentence; but if it is desired to punish him for the escape, a charge must be preferred, and he must be tried under s. 22.

See, generally, as to military prisoners, [Q.R., Sect. VI, paras. 173-242; and for forms of order of commitment, &c., see Rules, App. III, Forms C—L. Q.R., Section VI, paras. 215-216.

64. Where a sentence of imprisonment is passed or is Supplemental provisions as to sentences of imprisonment passed or being undergone in the United Kingdom, then for the purposes of the provisions of this Act relating to imprisonment—

- (1.) The expression "public prison" means any prison in the United Kingdom in which offenders sentenced by a civil court to imprisonment can for the time being be confined;
- (2.) Any one or more of the following officers shall be the committing authority :
 - (a.) The Commander-in-Chief ;
 - (b.) The Adjutant-General ;
 - (c.) The officer who confirmed the sentence ;
 - (d.) The commanding officer of the military prisoner ; and
 - (e.) Any other prescribed officer.
- (3.) Any one of the following officers shall be the discharging authority :

Part I.

ss. 64-65.

- (a.) The Commander-in-Chief ;
 - (b.) The Adjutant-General ;
 - (c.) The officer commanding the military district in which the prisoner may be ;
 - (d.) The officer who confirmed the sentence ;
 - (e.) Any other prescribed officer ; also,
 - (f.) Where the sentence was passed by the commanding officer, the commanding officer.
- (4.) Any one or more of the following officers shall be the removing authority ;
- (a.) The Commander-in-Chief ;
 - (b.) The Adjutant-General ;
 - (c.) The officer commanding the military district in which the prisoner may be ;
 - (d.) Any other prescribed officer ; also,
 - (e.) Where the sentence was passed by the commanding officer, the commanding officer.

Sub-section (1). *Public prison.* This includes a military prison (s. 133).

Commanding officer—Prescribed officer. See note to s. 59.

The removing authority as regards a military prisoner in Ireland includes the general commanding the forces in Ireland. (Rule 125 B.)

Supple-
mental pro-
vision as to
sentences of
imprison-
ment passed
or being
undergone
in India or
a colony.

65. Where a sentence of imprisonment is passed or being undergone in India or any colony, then, for the purposes of the provisions of this Act relating to imprisonment—

- (1.) The expression “public prison” means any of the following prisons ; that is to say,
 - (a.) where the sentence was passed in India, any authorised prison in India ;
 - (b.) where the sentence was passed in a colony, any authorised prison in that colony ;
 - (c.) any such authorised prison in any part of Her

Majesty's dominions other than that in which the sentence was passed as may be prescribed ;
and

Part I.
s. 65.

- (d.) any public prison in the United Kingdom as above defined for the purpose of the provisions of this Act relating to imprisonment in the United Kingdom ;
- (2.) " Authorised prison " means any prison in India or any colony which the Governor-General of India or the Governor of such colony, with the concurrence of the Secretary of State, may have appointed as a prison in which military prisoners may be confined :
- (3.) A military prisoner may temporarily be confined in a prison not a public prison, with the assent of the authority having jurisdiction over such prison. And a military prisoner who is to undergo his sentence in the United Kingdom, until he reaches a prison in the United Kingdom in which he is to undergo his sentence, may be kept in military custody or in civil custody, and partly in one description of custody and partly in the other, and may from time to time be transferred from military custody to civil custody, and from civil custody to military custody, as occasion may require ;
- (4.) Any one or more of the following officers shall be the committing authority ; that is to say,

(a.) In India—

(i.) The Commander-in-Chief of the forces in India ;

(ii.) * * * *

(iii.) The Adjutant-General in India ; and

(iv.) * * * *

Part I.
s. 65.

- (b.) In a colony, the officer commanding the forces in that colony ; and
- (c.) In any case, whether in India or in a colony—
 - (i.) The officer who confirmed the sentence ;
 - (ii.) The commanding officer of the military prisoner ; and
 - (iii.) Any other prescribed officer :
- (5.) Any of the following officers shall be the discharging authority :
 - (a.) The officer commanding the military district or station in which the prisoner may be ;
 - (b.) Any officer in this section named as a committing authority, with this exception, that the commanding officer shall only be a discharging authority where the sentence was passed by a commanding officer ; and
 - (c.) Any other prescribed officer.
- (6.) Any one or more of the following officers shall be the removing authority :
 - (a.) Any officer in this section named as a committing authority ;
 - (b.) The officer commanding the military district or station where the prisoner may be ; and
 - (c.) Any other prescribed officer. :

Sub-section (1). *Public prison* includes a military prison s. 133.

For definitions of India and colony, see s. 190 ; and as to the Isle of Man and Channel Islands, see s. 187 (2).

(c.) These have been prescribed by Rule 129, see note to that Rule as to military prisons. See also s. 134, and Q.R., Section VI, paras. 177, 178.

Sub-section (2). *Authorised prison* includes a military prison, in India, s. 133.

See generally as to orders and warrants of officers, s. 172 and note. As to *Commanding officer* and *Prescribed officer* see note s. 59

66. Where a sentence of imprisonment is passed by a court-martial or commanding officer in any foreign country, then if and as soon as the military prisoner on whom such sentence has been passed is brought into the United Kingdom or India, or any colony, the provisions of this Act shall apply in the same manner in all respects as if the sentence of imprisonment had been passed in the United Kingdom, India, or any colony, as the case may be, with this addition, that the officer commanding the army or force to which the military prisoner belonged at the time of his being sentenced shall also be deemed to be a committing authority.

Part I.
ss. 66-67.
Supplemental provision as to sentences of imprisonment passed in a foreign country.

Commanding officer, see note to s. 59.

Foreign country; India; Colony. For definitions, see s. 190; and as to Isle of Man and Channel Islands, see s. 187 (2).

67. (1.) The competent military authority (hereafter in this section mentioned) may give directions for the delivery into military custody of any military prisoner for the time being undergoing his sentence of imprisonment, and the removal of such prisoner, whether with his corps or separately, to any place beyond the seas where the corps, or any part thereof, to which for the time being he belongs, is serving or under orders to serve.

Removal of prisoner to place where corps is serving.

(2.) The directions of such competent military authority, or an order of the removing authority issued in pursuance of such directions, shall be sufficient authority for the removal of such prisoner from the prison in which he is confined, and for his conveyance in military custody to any place designated, and for his intermediate custody during such removal and conveyance.

(3.) The competent military authority may further give directions for the discharge of the prisoner, either conditionally or unconditionally at any time while he is in military custody under this section.

(4.) For the purposes of this section any one or more of the following officers shall be the competent military authority :

Part I. (a.) In the United Kingdom—

ss. 67-68.

- (i.) The Commander-in-Chief ;
- (ii.) The Adjutant-General ; and
- (iii.) Any other prescribed officer.

(b.) In India—

- (i.) The Commander-in-Chief of the forces in India ;
- (ii.) * * * * *
- (iii.) The Adjutant-General in India ; and
- (iv.) * * * * *

(c.) In a colony, the officer commanding the forces in that colony : and

(d.) In any case, whether in India or in a colony, the prescribed officer.

The object of this section is to enable soldiers who are undergoing sentences of imprisonment to be removed in custody for foreign service. Soldiers in prison for military crimes (desertion for instance) may in many cases be given a fresh opportunity of recovering their characters by being at once removed to a foreign station. The section will also prevent offences committed immediately before embarkation for service from escaping all punishment ; but it gives no authority to commit offenders committing such offences to any public prison on their arrival at the foreign station.

Prescribed officer. As regards a military prisoner for the time being in Ireland, the general commanding the forces in Ireland is prescribed as a competent military authority by Rule 125 (B).

For definition of India and colony, see s. 190 ; and as to the Isle of Man and Channel Islands, see s. 187 (2).

Commence-
ment of
term of
penal servi-
tude or
imprison-
ment.

68. (1.) The term of penal servitude or imprisonment to which a person is sentenced by a court-martial, whether the sentence has been revised or not, and whether the prisoner is already undergoing sentence or not, shall be reckoned to commence on the day on which the original sentence and proceedings were signed by the president of the court-martial.

(2.) An offender under this Act shall not be subject to imprisonment for more than two consecutive years, whether under one or more sentences. Part I.
ss. 68-69.

Under this section a term of penal servitude or imprisonment under sentence by court-martial cannot be made to commence at the expiration of a previous term of penal servitude or imprisonment, but must commence on the day on which the sentence is signed by the president of the court. If, therefore, the court desire to award imprisonment (say three months) on a prisoner already in prison for six months' imprisonment, of which three months are unexpired, the court must award six months, and similarly with respect to sentences of penal servitude.

The period of imprisonment which a soldier is to suffer, whether under one sentence or several sentences, must never exceed two years. This restriction applies where a soldier is tried at the expiration of a sentence of imprisonment for an offence committed during that sentence. Q.R., Sect. VI, para. 107. Two years is the maximum period which a prisoner can usually endure according to the system of imprisonment with hard labour in civil prisons in the United Kingdom, and is, in many cases, a more severe punishment than five years' penal servitude.

No restriction is imposed on the duration of a sentence of penal servitude, as penal servitude for life is authorised for every offence for which penal servitude can be imposed under this Act.

Where a soldier sentenced to be reduced to the ranks was found not to have legally the grade of non-commissioned officer, and the court on revision passed a sentence of imprisonment, the imprisonment was held to commence on the date of the original sentence of reduction.

As to commencement on commutation, see note to s. 57.

MISCELLANEOUS.

Articles of War and Rules of Procedure.

69. It shall be lawful for Her Majesty to make Articles of War for the better government of officers and soldiers, and such Articles shall be judicially taken notice of by all judges and in all courts whatsoever: Provided that no person shall, by such Articles of War, be subject to suffer any punishment extending to life or limb, or to be kept in penal servitude, except for crimes which are by this Act expressly made liable to such punishment as aforesaid, or

Power of
Her Majesty
to make
Articles of
War.

Part I. be subject, with reference to any crimes made punishable
 ss. 69-70. by this Act, to be punished in any manner which does
 not accord with the provisions of this Act.

Formerly, as is well known, military law was contained in the
 annual Mutiny Act and in Articles of War framed under its
 authority: see Chapter II.

Power of
 Her Majesty
 to make
 rules of
 procedure.

70. (1.) Subject to the provisions of this Act Her
 Majesty may, by rules to be signified under the hand of
 a Secretary of State, from time to time make, and when
 made repeal, alter, or add to, provisions in respect of the
 following matters or any of them; that is to say,

- (a.) The assembly and procedure of courts of inquiry;
- (b.) The convening and constituting of courts-martial;
- (c.) The adjournment, dissolution, and sittings of courts-martial;
- (d.) The procedure to be observed in trials by court-martial;
- (e.) The confirmation and revision of the findings and sentences of courts-martial; and enabling the authority having power under section fifty-seven of this Act to commute sentences to substitute a valid sentence for an invalid sentence of a court-martial;
- (f.) The carrying into effect sentences of courts-martial;
- (g.) The forms of orders to be made under the provisions of this Act relating to courts-martial, penal servitude, or imprisonment;
- (h.) Any matter in this Act directed to be prescribed;
- (i.) Any other matter or thing expedient or necessary for the purpose of carrying this Act into execution so far as relates to the investigation, trial, and punishment of offences triable or punishable by military law:

(2.) Provided always, that no such rules shall contain anything contrary to or inconsistent with the provisions of this Act:

(3.) All rules made in pursuance of this section shall be judicially noticed. Part I.
ss. 70-71.

(4.) All rules made in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if Parliament be not then sitting, as soon as practicable after the beginning of the then next session of Parliament.

The Rules of Procedure made under this section, and dated the 29th August, 1881, are superseded by the Rules, dated 13th September, 1893, which are printed below, p. 585.

Command.

71. (1.) For the purpose of removing doubts as to the powers of command vested or to be vested in officers and others belonging to Her Majesty's forces, it is hereby declared that Her Majesty may, in such manner as to Her Majesty may from time to time seem meet, make regulations as to the persons to be invested as officers, or otherwise, with command over Her Majesty's forces, or any part thereof, or any person belonging thereto, and as to the mode in which such command is to be exercised ; provided that command shall not be given to any person over a person superior in rank to himself. Removal of
doubts as to
military
command.

(2.) Nothing in this section shall be deemed to be in derogation of any power otherwise vested in Her Majesty.

This section removes all doubts as to the power of Her Majesty to regulate the command by officers of the regular forces over such forces, or over any portion of the auxiliary forces, and the command by officers of any portion of the auxiliary forces over any other portion of those forces, or over any portion of the regular forces. The provisions of the Militia Acts relating to command, and those of the Volunteer Act which limited the command of officers of the regular forces over volunteers, and of Volunteer officers over any portion of the regular forces, have been repealed.

The proviso applies only to rank in relation to military command, and does not prevent an officer from having military command over an officer with higher relative rank, but no military command.

(M.L.)

Part I.

Inquiry as to and Confession of Desertion.

ss. 72-73.

Inquiry by
court on
absence of
soldier.

72. (1.) When any soldier has been absent without leave from his duty for a period of twenty-one days, a court of inquiry may as soon as practicable be assembled, and inquire in the prescribed manner on oath or solemn declaration (which such court is hereby authorised to administer) respecting the fact of such absence, and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessities, or clothing of the soldier; and if satisfied of the fact of such soldier having absented himself without leave or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the absent soldier shall enter in the regimental books a record of the declaration of such court.

(2.) If the absent soldier does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction by court-martial for desertion.

In the event of a soldier being absent without leave for a period exceeding 21 days, a court of inquiry must be assembled at once, unless he has been taken into custody, Q.R., Sect. VI, para. 128, which does not, however, apply in the case of absconded recruits. The procedure of such a court is detailed in Rule 124: under that Rule and this section the witnesses will be sworn, but not the members of the court.

Confession
by soldier of
desertion or
fraudulent
enlistment.

73. (1.) Where a soldier signs a confession that he has been guilty of desertion or of fraudulent enlistment a competent military authority may, by the order dispensing with his trial by a court-martial, or by any subsequent order, award the same forfeitures and the same deductions from pay (if any) as a court-martial could award for the said offence, or as are consequential upon conviction by a court-martial for the said offence, except such of them as may be mentioned in the order.

(2.) If upon any such confession, evidence of the truth or falsehood of such confession cannot then be conveniently

obtained, the record of such confession, countersigned by the commanding officer of the soldier, shall be entered in the regimental books, and such soldier shall continue to do duty in the corps in which he may then be serving, or in any other corps to which he may be transferred, until he is discharged or transferred to the reserve, or until legal proof can be obtained of the truth or falsehood of such confession. Part I.
s. 73-74.

(3.) The competent military authority for the purposes of this section means the Commander-in-Chief or Adjutant-General, or any general or other officer commanding a military district; or, in the case of India, the Commander-in-Chief of the forces in India, and in the case of a colony and elsewhere the general or other officer commanding the forces, subject in the case of India, or a colony, or elsewhere, to any directions given by the Commander-in-Chief.

Before accepting a confession of desertion or fraudulent enlistment signed by a soldier, care should be taken to ascertain that he fully understands the nature and consequences of his act.

He will forfeit the whole of his prior service, and be liable to serve for the original term of his enlistment reckoned from the date of his trial being dispensed with: and the forfeited service can only be restored by the Secretary of State, s. 79 (2).

The deductions from pay are regulated by s. 138 and the Royal Warrant.

For definition of India and colony, see s. 190; and as to the Isle of Man and Channel Islands, see s. 187 (2).

See also Q.R., Sect. VI, paras. 32, 157-163.

Provost Marshal.

74. (1.) For the prompt repression of all offences which may be committed abroad, provost-marshals with assistants may from time to time be appointed by the general order of the general officer commanding a body of forces. Provost-marshal.

(2.) A provost-marshal or his assistants may at any time arrest and detain for trial persons subject to military law committing offences, and may also carry into execution
(M.L.)

Part I. tion any punishments to be inflicted in pursuance of a court-martial, but shall not inflict any punishment of his or their own authority.

ss. 74-75.

The provost-marshal can only be appointed abroad, and will always be a commissioned officer; his assistants may be either officers or non-commissioned officers. Q.R., Sect. VI, para. 123. He is under this Act merely an executive officer, without any authority to award punishment himself. He can, however, arrest and detain persons committing offences who are subject to military law, including therefore followers when on active service, and can apply on active service for their trial by court-martial. If the convening officer thinks it impracticable to try the case by an ordinary court-martial, he can convene a field general court-martial which can try the prisoner summarily, and inflict any punishment a general court-martial can inflict, whether on officers, soldiers, or followers. See s. 49. The provost-marshal and his assistants may carry into execution the sentence, when confirmed, of such court as well as of other courts-martial.

Restitution of Stolen Property.

Power as to
restitution
of stolen
property.

75. (1.) Where a person has been convicted by court-martial of having stolen, embezzled, received, knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such court-martial or the Commander-in-Chief, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2.) A like order may be made with respect to any property found in the possession of such offender, which appears to the confirming authority or Commander-in-Chief to have been obtained by the conversion or exchange of any of the property stolen, embezzled, received, or unlawfully obtained.

(3.) Moreover where it appears to the confirming authority or Commander-in-Chief from the evidence given before the court-martial, that any part of the property stolen, embezzled, received, or unlawfully obtained was

sold to or pawned with any person without any guilty knowledge on the part of the person purchasing or taking in pawn the property, the authority or Commander-in-Chief may, on the application of that person, and on the restitution of the said property to the owner thereof, order that out of the money (if any) found in the possession of the offender, a sum not exceeding the amount of the proceeds of the sale or pawning shall be paid to the said person purchasing or taking in pawn.

(4.) An order under this section shall not bar the right of any person, other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this section from the person to whom the same is so delivered or paid.

The restoration under this section can only be made by order of the confirming authority, or of the Commander-in-Chief: and an order can only deal with property or money found in the possession of the offender himself; but where the offender occupies a house, property found in that house is *prima facie* in his possession.

The stealing or embezzlement of property does not alter the ownership, and therefore *prima facie* the person from whom property has been stolen or embezzled is the lawful owner of it.

Care must be taken to report in the United Kingdom to the Commander-in-Chief, and elsewhere to the confirming officer, any circumstances which would justify him in making an order under this section.

PART II.

ENLISTMENT.

- Part II.** For history of service in the army, see Chapter IX, and for general explanation of this part, see Chapter X.
- ss. 76-77.** For regulations as to recruiting, transfers, discharge and service, see Q.R., Sect. XIX, and the Recruiting Regulations.

Period of Service.

Limit of original enlistment. **76.** A person may be enlisted to serve Her Majesty as a soldier of the regular forces for a period of twelve years, or for such less period as may be from time to time fixed by Her Majesty, but not for any longer period, and the period for which a person enlists is in this Act referred to as the term of his original enlistment.

The terms of enlistment for the various arms of the service, and conditions of transfer, are prescribed by the Queen's Regulations.

Terms of original enlistment. **77.** The original enlistment of a person under this Act shall be as follows, either—

- (1.) For the whole of the term of his original enlistment in army service ; or
- (2.) For such portion of the term of his original enlistment as may be from time to time fixed by a Secretary of State, and specified in the attestation paper, in army service, and for the residue of the said term in the reserve.

Sub-section (2). *The reserve.* This means the Army Reserve under the Reserve Forces Act, 1882. See 45 & 46 Vict., c. 48, s. 28.

78. (1.) A Secretary of State may from time to time, **Part II.**
by general or special regulations, vary the conditions of **ss. 78-79.**
service, so as to permit a soldier of the regular forces in
army service, with his assent, either— **Change of
conditions
of service.**

(a.) To enter the reserve at once for the residue un-
expired of the term of his original enlistment ;
or

(b.) To extend his army service for all or any part of the
residue unexpired of such term ; or

(c.) To extend the term of his original enlistment up to
the period of twelve years.

(2.) A Secretary of State may from time to time by
general or special regulations vary the conditions of
service so as to permit a man in the reserve, with his
assent, to re-enter upon army service for all or any part of
the residue unexpired of the term of his original enlist-
ment, or for any period of time not exceeding twelve
years in the whole from the date of his original enlist-
ment.

The reserve. See note to last section.

As to a man entering the reserve before the time of his army
service has expired, see s. 89.

This section applies to every soldier enlisted since the 9th of
August, 1870.

79. In reckoning the service of a soldier of the regular **Reckoning
and for-
feiture of
service.**
forces for the purpose of discharge or of transfer to the
reserve —

(1.) The service shall begin to reckon from the date of
his attestation ; but

(2.) Where a soldier of the regular forces has been
guilty of any of the following offences :

(a.) Desertion from Her Majesty's service ; or

(b.) Fraudulent enlistment ;

then either upon his conviction by court-martial of
the offence, or (if having confessed the offence, he is

Part II.

s. 79.

liable to be tried) upon his trial being dispensed with by order of the competent military authority, the whole of his prior service shall be forfeited, and he shall be liable to serve as a soldier of the regular forces for the term of his original enlistment, reckoned from the date of such conviction or such order dispensing with trial, in like manner as if he had been originally attested at that date :

Provided that a Secretary of State may restore all or any part of the service forfeited under this section to any soldier who may perform good and faithful service, or may otherwise be deemed by such Secretary of State to merit such restoration of service, or may be recommended for such restoration of service by a court-martial.

Sub-section (2). A soldier will not forfeit service towards discharge for any absence or for any period of imprisonment, but if he is convicted of desertion or fraudulent enlistment he will forfeit all his prior service, and begin again as if he had enlisted at the date of his conviction. The Secretary of State, however, has power to restore all or part of the forfeited service to a soldier where either the soldier performs good and faithful service, or a court-martial recommends it.

The sub-section provides not only for forfeiture of service on conviction, but also in cases in which on the confession of the offender trial is dispensed with (see s. 73) by order of the competent military authority. The sub-section applies to the reckoning of service for purposes of discharge or transfer to the reserve only. Forfeiture of ordinary pay is dealt with in s. 138, while forfeiture of service towards good conduct pay or pension is regulated by the Royal Warrant.

If an army reserve man enlists and is sent back to the reserve, he does not forfeit any part of his service, but if retained with the colours, his service will be reckoned from the date of his improper attestation. See Q.R., Sect. XIX.

If he is liable to be tried. These words exclude the application of the sub-section in the case of a soldier who after three years of exemplary service has made a confession of desertion when not on active service, or of fraudulent enlistment. Under s. 161 a soldier making such a confession cannot be tried or punished, and it is not intended that he should forfeit his service under this section; but if the offence to which he confesses was that of

fraudulent enlistment, he will under s. 161 forfeit all service prior to the date of his fraudulent enlistment, inasmuch as by such enlistment he has contracted to ignore that service and to serve for the term in his new attestation: and he will be held to his new contract so to serve. Part II.
—
ss. 79-80.

It must be recollected that the provisions of this section as to reckoning or forfeiture of service do not apply to soldiers enlisted or re-engaged before the commencement of the Army Discipline and Regulation Act, 1879, except with their own consent, and they remain subject to ss. 50 and 55 of the Mutiny Act.

But the service of any such soldier may, with his consent, and with the approval of the competent military authority (see s. 101), be reckoned from the date of his attestation without any deduction on account of his age, imprisonment, desertion, absence without leave, or otherwise.

A soldier who continues in the service after completing 21 years' service is deemed to have consented to the application to him of the whole of the provisions of Part II of the Act. See s. 85 and note.

Proceedings for Enlistment.

80. (1.) Every person authorised to enlist recruits in the regular forces (in this Act referred to as the "recruiter") shall give to every person offering to enlist a notice in the form for the time being authorised by a Secretary of State, stating the general requirements of attestation and the general conditions of the contract to be entered into by the recruit, and directing such person to appear before a justice of the peace either forthwith or at the time and place therein mentioned. Mode of
enlistment
and attesta-
tion.

(2.) Upon the appearance before a justice of the peace of a person offering to enlist, the justice shall ask him whether he has been served with and understands the notice and whether he assents to be enlisted, and shall not proceed with the enlistment if he considers the recruit under the influence of liquor.

(3.) If he does not appear before a justice, or on appearing does not assent to be enlisted, no further proceedings shall be taken.

Part II. (4.) If he assents to be enlisted—

s. 80.]

- (a.) The justice, after cautioning such person that if he makes any false answer to the questions read to him he will be liable to be punished as provided by this Act, shall read or cause to be read to him the questions set forth in the attestation paper for the time being authorised by a Secretary of State, and shall take care that such person understands each question so read, and after ascertaining that the answer of such person to each question has been duly recorded opposite the same in the attestation paper, shall require him to make and sign the declaration as to the truth of those answers set forth in the said paper, and shall then administer to him the oath of allegiance contained in the said paper :
- (b.) Upon signing the declaration and taking the oath, such person shall be deemed to be enlisted as a soldier of Her Majesty's regular forces :
- (c.) The justice shall attest by his signature, in manner required by the said paper, the fulfilment of the requirements as to attesting a recruit, and shall deliver the attestation paper, duly dated, to the recruiter :
- (d.) The fee for the attestation of a recruit, and for all acts and things incidental thereto, shall be one shilling and no more, and shall be paid to the clerk of the justice :
- (e.) The officer who finally approves of a recruit for service shall, at his request, furnish him with a certified copy of his attestation paper.
- (5.) The date at which the recruit signs the declaration and takes the oath in this section in that behalf mentioned shall be deemed to be the date of the attestation of such recruit.

(6.) The competent military authority, if satisfied that there is any error in the attestation paper of a recruit, may cause the recruit to attend before some justice of the peace, and that justice, if satisfied that such error exists, and is not so material as to render it just that the recruit should be discharged, may amend the error in the attestation paper, and the paper as amended shall thereupon be deemed as valid as if the matter of the amendment had formed part of the original matter of such paper. Part II.
ss. 80-81.

(7.) Where the regulations of a Secretary of State under this part of this Act require duplicate attestation papers to be signed and attested, this section shall apply to both such duplicates, and in the event of any amendment of an attestation paper the amendment shall be made in both of the duplicate attestation papers.

A man is under this Act enlisted by the act of attestation ; and the recruiter's gift of the shilling is no longer necessary. He will give the form, authorised by the Secretary of State, directing the recruit to appear before a justice. The man, if he fails to appear, cannot, as heretofore, be arrested as a deserter ; and if he appears and dissents from his enlistment, he will not be liable to pay any smart money. No account will, therefore, be taken of any man before he is actually attested before a justice. As to the meaning of justice, see s. 94.

After such attestation a man can only get off his contract of enlistment by purchasing his discharge under s. 81 within three months afterwards on payment of a sum which at present is fixed at ten pounds. But discharge on this payment is a matter of right not of favour, unless it is claimed during a period when the reserves are called out (see s. 88). See s. 81.

The attestation is required to be in duplicate, Q.R., Sect. XXII.

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

81. If a recruit within three months after the date of his attestation pays for the use of Her Majesty a sum not exceeding ten pounds, he shall be discharged with all Power of
recruit to
purchase
discharge.

Part II. convenient speed, unless he claims such discharge during a period when soldiers in army service who otherwise would be transferred to the reserve are required by a proclamation of Her Majesty in pursuance of this Act to continue in army service, in which case he may be retained in Her Majesty's service during that period, and at the termination thereof shall, if he so require it, on the payment then of the said sum, be discharged.

Appointment to Corps and Transfers.

Enlistment
for general
service and
appoint-
ment to
corps.

82. (1.) Recruits may, in pursuance of any general or special regulations from time to time made by a Secretary of State, be enlisted for service in particular corps of the regular forces, but save as is provided by such regulations, if any, recruits shall be enlisted for general service.

(2.) The competent military authority shall as soon as practicable appoint a recruit, if enlisted for service in a particular corps, to that corps, and if enlisted for general service, to some corps of the regular forces.

Sub-section (2). *Appoint.* The words "appoint" and "transfer" are used in this Act in the following senses. A soldier on attestation is appointed to the corps out of which he cannot be moved without his consent, except as mentioned in the Act. This appointment differs from the appointment of a soldier to a particular office, inasmuch as it does not, like the latter appointment, require the consent of the soldier.

Any disposition of a soldier within his corps which can be legally effected independently of his consent is termed posting.

- (a.) In the case of infantry, a soldier may be posted to a battalion of his territorial or other regiment, or to the permanent staff of any volunteers belonging to that regiment.
- (b.) In the case of artillery, the soldier may be posted to any battery or company.
- (c.) In the case of engineers, he may be posted to any troop or company.
- (d.) In the case of other corps to any company or station according to their respective sub-divisions.

"Transfer" is a disposition of the soldier which moves him out

of the corps to which he was originally appointed, or to which, **Part II.**
for the time being, he belongs, either with his consent or under
special conditions provided by the Act. **ss. 82-83.**

Thus if a soldier is moved—

- (a.) In the case of infantry, out of his territorial regiment to any other regiment or to any other corps; or
- (b.) In the case of artillery or engineers, out of the artillery or engineers to another corps; or
- (c.) In the case of any other corps, out of his corps into any body outside his corps,

he will be transferred.

“Attach” means removing temporarily a soldier either with or without his consent from a corps and placing him with another corps, without affecting in any way his status in the first-mentioned corps.

Competent military authority. See definition in s.101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

83. A soldier of the regular forces, whether enlisted for general service or not, when once appointed to a corps, shall serve in that corps for the period of his army service, whether during the term of his original enlistment or during the period of such re-engagement as is in this Act mentioned, unless transferred under the following provisions:

Effect of appointment to a corps and provision for transfers.

(1.) A soldier of the regular forces enlisted for general service may, within three months after the date of his attestation, be transferred to any corps of the regular forces of the same arm or branch of the service by order of the competent military authority.

(2.) A soldier of the regular forces may at any time with his own consent be transferred by order of the competent military authority to any corps of the regular forces.

(3.) Where a soldier of the regular forces is in pursuance of any of the foregoing provisions transferred to a corps in an arm or branch different from that in which he was previously serving, the competent military authority may by order vary the conditions of his service so as to cor-

Part II. respond with the general conditions of service in the arm
s. 83. or branch to which he is transferred.

(4.) A soldier of the regular forces in any branch of the service may be transferred by order of the competent military authority to any corps of the same branch which is serving in the United Kingdom in either of the following cases:—

(a.) when he has been invalided from service beyond the seas; or

(b.) when, in the case of his corps or the part thereof in which he is serving being ordered on service beyond the seas, he is either unfit for such service by reason of his health, or is within two years from the end either of the period of his army service in the term of his original enlistment or of such re-engagement as is in this Act mentioned.

(5.) Where a soldier of the regular forces in any branch of the service, who was enlisted to serve part of the term of his original enlistment in the reserve, and has not extended his army service for the whole of that time, is on service beyond the seas, and at the time of his corps or the part thereof in which he is serving being ordered to another station or to return home, has more than two years of his army service in the term of his original enlistment unexpired, he may be transferred by order of the competent military authority to any corps of the same branch which or a part of which is on service beyond the seas.

(6.) Where a soldier of the regular forces has been transferred to serve, either as a warrant officer not holding an honorary commission, or in the corps of armourer serjeants, or in the army hospital corps, or in the army service corps, or on the staff, or in the corps of mounted military police, or in any corps not being a corps of infantry, cavalry, artillery, or engineers, he may by order

of the competent military authority, either during the term of his original enlistment or during the period of his re-engagement, be removed from such service and transferred to any corps of the regular forces serving in the United Kingdom, or to any corps of the regular forces serving on the station beyond the seas on which he is serving at the time of his removal, or to the corps of the regular forces in which he was serving prior to such first-mentioned transfer, either in the rank he holds at the time of his removal or any lower rank.

(7.) Where a soldier of the regular forces—

- (a.) Has been guilty of the offence of desertion from Her Majesty's service or of fraudulent enlistment, and has either been convicted of the same by a court-martial, or having confessed the offence, is liable to be tried, but his trial has been dispensed with by order of the competent military authority; or
- (b.) Has been sentenced by a court-martial for any offence to a punishment not less than imprisonment for a term of six months;

such soldier shall be liable, in commutation wholly or partly of other punishment, to general service, and may from time to time be transferred to such corps of the regular forces as the competent military authority may from time to time order.

(8.) A soldier of the regular forces delivered into military custody or committed by a court of summary jurisdiction in any part of Her Majesty's dominions as a deserter shall be liable to be transferred by order of the competent military authority to any corps of the regular forces near to the place where he is delivered or committed, or to any other corps to which the competent military authority think it desirable to transfer him, and to serve in the corps to which he is transferred without prejudice to his subsequent trial and punishment.

Part II. *Appointed—transferred*, see note on s. 82.

ss. 83–84. Sub-section (1). The transfer during these three months does not require the consent of the soldier. During those three months he is entitled to his discharge under s. 81 on proper demand and payment.

Sub-section (3). *Vary the conditions of his service*. This is to provide for such a case as the transfer of a man from the infantry to the cavalry. The time of service in the cavalry is usually longer than in the infantry, and it may be necessary consequently to lengthen the army service of the man transferred.

Sub-sections (4) and (5). *Or the part thereof in which he is serving*. These words are inserted in consequence of “corps” meaning an infantry territorial regiment, part of which may be serving in and the other part out of the United Kingdom. It will therefore apply to the case where the battalion in which the man is serving is ordered abroad.

Sub-section (6). *Armourer Serjeants, Army Hospital Corps*. Now the Corps of Armourers and Medical Staff Corps.

Sub-section (7). *Is liable to be tried*. These words will relieve from the operation of this sub-section a soldier who, though having confessed an offence, is exempted by s. 161 from trial and punishment. The liability to general service is a commutation of punishment which may be allowed by the “competent military authority,” and is not a punishment which a court-martial can award. Consequently it is not within the powers of mitigation and commutation given to confirming and other officers by s. 57. But in the case of an offence other than desertion or fraudulent enlistment, the liability arises only when the sentence awarded by the court-martial is not less than six months’ imprisonment. An order passed under this sub-section will be entered in the soldier’s record of service, Q.R., Sect. VI, para. 120.

Competent military authority is defined in s. 101. Rule 127 adds to the definition for the purpose of a transfer by consent under sub-section (2) of this section, the General commanding the forces in Ireland and the General commanding a military district in the United Kingdom.

See generally as to transfers, Q.R., Sect. XIX.

Re-engagement and Prolongation of Service.

Re-engagement of soldiers.

84. (1.) Subject to any general or special regulations from time to time made by a Secretary of State, a soldier of the regular forces, if in army service and after the expiration of nine years from the date of his original term of enlistment may, on the recommendation of his

commanding officer, and with the approval of the competent military authority, be re-engaged for such further period of army service as will make up a total continuous period of twenty-one years of army service, reckoned from the date of his attestation, and inclusive of any period previously served in the reserve. Part II.
§§. 84-85.

(2.) A soldier of the regular forces during his period of re-engagement shall be liable to forfeit his previous service during such period of re-engagement in like manner as he is liable under this part of this Act during the term of his original enlistment.

(3.) A soldier of the regular forces who so re-engages shall make before his commanding officer a declaration in accordance with the said regulations.

Sub-section (1). *Competent military authority* is defined in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer.

This section applies to all soldiers, at whatever time they enlisted.

A soldier enlisted before the commencement of the Act becomes, on re-engagement, subject in all respects to the provisions of the Act.

85. A soldier of the regular forces who has completed, or will within one year complete, a total period of twenty-one years' service, inclusive of any period served in the reserve, may give notice to his commanding officer of his desire to continue in Her Majesty's service in the regular forces; and if the competent military authority approve, he may be continued as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged. Con-
tinuance in
service after
twenty-one
years'
service.

Inclusive of any period served in the reserve. This meets the case where a man has been transferred to the reserve, and after staying a time in the reserve has either been called out and re-

Part II. engaged, or has volunteered to serve again with the colours and has re-engaged.

ss. 85-87.

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section the commanding officer of the soldier, and every officer superior in command to that commanding officer. See Q.R., Sect. XIX.

This section applies to all soldiers at whatever time they enlisted.

Soldiers who gave notice to continue their service were formerly assumed to remain under the Act to which they were subject at the time they gave the notice, but every soldier who gives such notice after the commencement of this Act will be considered to have consented to the application to him of the whole of the provisions of Part II of this Act.

Re-engagement and continuance of service of non-commissioned officers.

86. The regulations from time to time made in pursuance of this part of this Act may, if it seems expedient, provide that a non-commissioned officer of the regular forces who extends his army service for the residue unexpired of his original term of enlistment shall have the right at his option to re-engage under section eighty-four, and to continue his service under section eighty-five of this Act, or to do either of such things, subject nevertheless to the veto of the Secretary of State or other authority mentioned in the regulations, and to such other conditions as are specified in the regulations.

The object of this section is to enable regulations to be made by which a non-commissioned officer, who agrees to extend his army service for the whole of his twelve years, may have the right to treat the army as his profession for life, and if he makes himself efficient and conducts himself properly, to continue in the army until he has earned a pension. For the regulations under this section, see Q.R., Sect. XIX.

Prolongation of service in certain cases.

87. (1.) Where the time at which a soldier of the regular forces would otherwise be entitled to be discharged occurs while a state of war exists between Her Majesty and any foreign Power, or while such soldier is on service beyond the seas, or while soldiers in the reserve are required by a proclamation in pursuance of the enactments relating to the calling out of the reserve on per-

manent service to continue in or re-enter upon army service, the soldier may be detained, and his service may be prolonged for such further period, not exceeding twelve months, as the competent military authority may order ; but at the expiration of that period, or any earlier period at which the competent military authority considers his services can be dispensed with, the soldier shall as provided by this Act be discharged with all convenient speed.

Part II.
s. 87.

(2.) Where the time at which a soldier of the regular forces would otherwise be entitled to be transferred to the reserve occurs while a state of war exists between Her Majesty and any foreign Power, the soldier may be detained in army service for such further period, not exceeding twelve months, as the competent military authority may order, but at the expiration of that period, or any earlier period at which the competent military authority consider his services can be dispensed with, the soldier shall, with all convenient speed, be sent to the United Kingdom for the purpose of being transferred to the reserve.

(3.) If a soldier required under this section to be discharged or sent to the United Kingdom desires, while a state of war exists between Her Majesty and any foreign Power, to continue in Her Majesty's service, and the competent military authority approve, he may agree to continue as a soldier of the regular forces in the same manner in all respects as if his term of service were still unexpired, except that he may claim his discharge at the end of such state of war, or, if it is so provided by such agreement, at the expiration of any period of three months after he has given notice to his commanding officer of his wish to be discharged.

(4.) A soldier who so agrees to continue shall make before his commanding officer a declaration in accordance with any general or special regulations from time to time made by a Secretary of State.

(M.L.)

2 G 2

Part II. This section applies to all soldiers with the following modifications—that a soldier enlisted before the commencement of the A.D.R. Act, 1879, cannot be detained in service or have his service prolonged without his consent further or otherwise than he would have been liable to if the Army Act had not passed. Consequently, any such soldier who has not since re-engaged, cannot be detained in service merely because a proclamation has called out the reserves. On the other hand, a man enlisted under the Act of 1879 may be detained for an additional twelve months when on service beyond the seas.

Competent military authority, see s. 101, and Rule 127.

Sub-section (1). *Required by proclamation, &c.* The occasion must be one of imminent national danger or great emergency. See s. 88, and Reserve Forces Act, 1882, s. 12 (4).

Sub-section (3). This enables a man who is entitled to be discharged or transferred to the reserve to volunteer for service during the war without re-engaging for a period of eight or nine years' service.

In imminent national danger Her Majesty may continue soldiers in army service or call out for permanent service.

88. (1.) It shall be lawful for Her Majesty in Council in case of imminent national danger or of great emergency, by proclamation, the occasion being first communicated to Parliament if Parliament be then sitting, or if Parliament be not then sitting, declared by the proclamation, to order that the soldiers who would otherwise be entitled in pursuance of the terms of their enlistment to be transferred to the reserve shall continue in army service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for causing all or any of the soldiers mentioned in the proclamation to continue in army service.

(3.) Every soldier for the time being required by, or in pursuance of, such directions to continue in army service shall continue to serve in army service for the same period for which he might be required to serve, if he had been transferred to the reserve, and called out for

permanent service by a proclamation of Her Majesty Part II.
under the enactments relating to the reserve.

ss. 88-89.

(4.) Any man who has entered the reserve in pursuance of the terms of his enlistment may be called out for permanent service by a proclamation of Her Majesty under the enactments relating to the calling out of the reserve on permanent service.

This section applies to all soldiers who have at any time been enlisted to serve part of their time in the reserve. The effect of the Reserve Forces Act, 1882, s. 14, appears to be that all men in the reserve may be required to serve for a further period of twelve months under the circumstances under which a soldier may be detained in service under s. 87.

The proclamation calling out the reserve may be made under the Reserve Forces Act, 1882, in case of imminent national danger or of great emergency.

Discharge and Transfer to Reserve Force.

89. In the following cases ; that is to say,

- (1.) Where a soldier of the regular forces has been
invalided from service beyond the seas ; or
- (2.) Where a corps to which a soldier of the regular
forces belongs, or the part thereof in which he is
serving is ordered on service beyond the seas
and the soldier is either unfit for such service by
reason of his health, or is within two years of the
end of the period of his army service in the term
of his original enlistment ;

Transfer
soldier to
reserve
when corps
ordered
abroad.

the competent military authority may by order transfer him to the reserve in like manner as if the period of his actual service were specified in his attestation paper as the portion of the term of his original enlistment which was to be spent in army service.

Competent military authority, see definition, s. 101 and Rule 127.

This section does not apply, without his consent, to any soldier

Part II. who enlisted before the commencement of the Army Discipline and Regulation Act, 1879.

ss. 89-90.

**Discharge
or transfer
to reserve.**

90. (1.) Save as otherwise provided by this Act or the Acts relating to the reserve forces, every soldier of the regular forces upon the completion of the term of his original enlistment, or of the period of his re-engagement, shall be discharged with all convenient speed, but until so discharged shall be subject to this Act as a soldier of the regular forces.

(2.) Where a soldier of the regular forces enlisted in the United Kingdom is, when entitled to be discharged, serving beyond the seas, he shall, if he so requires, be sent to the United Kingdom, and in such case shall, with all convenient speed, be sent there free of expense, and on his arrival be discharged. If such soldier is permitted, at his request, to stay at the place where he is serving, he shall not afterwards have any claim to be sent at the public expense to the United Kingdom or elsewhere.

(3.) Every soldier of the regular forces upon the completion of the period of his army service, if shorter than the term of his original enlistment, shall be transferred to the reserve, but until so transferred shall be subject to this Act as a soldier of the regular forces.

(4.) Where a soldier of the regular forces, when entitled to be transferred to the reserve, is serving beyond the seas, he shall be sent to the United Kingdom free of expense with all convenient speed, and on his arrival shall be transferred to the reserve.

(5.) A soldier of the regular forces who is discharged on the completion of the term of his original enlistment or his re-engagement, as mentioned in the second subsection of this section, or is transferred to the reserve, shall be entitled to be conveyed free of cost from the place in the United Kingdom where he is discharged or transferred to the place in which he appears from his attestation paper to have been attested, or to any place at which

he may at the time of his discharge or transfer decide to take up his residence, and to which he can be conveyed without greater cost: Provided that in the case of transfer to the reserve he shall not be entitled to be so conveyed to any place out of the United Kingdom. Part II.
ss. 90-91.

Sub-section (1). *Save as otherwise provided.* Section 87 provides for the temporary detention of a man entitled to discharge. Section 158 gives power to detain for trial a man charged with an offence under this Act, though entitled to his discharge or transfer to the reserve. As to time of discharge, see s. 92.

As to postponement of transfer to the reserve, see s. 87.

This section applies to all soldiers, whenever enlisted.

91. (1.) A Secretary of State may, if he think proper, on account of a soldier's lunacy, cause any soldier of the regular forces on his discharge, and his wife and child, or any of them, to be sent to the parish or union to which under the statutes for the time being in force he appears, from the statements made in his attestation paper and other available information to be chargeable; and such soldier, wife, or child, if delivered after reasonable notice, in England or Ireland at the workhouse in which persons settled in such parish or union are received, and in Scotland to the inspector of poor of such parish, shall be received by the master or other proper officer of such workhouse or such inspector of poor, as the case may be: Delivery of
lunatic
soldier on
discharge
with his
wife or
child at
workhouse,
or of dan-
gerous
lunatic at
asylum.

(2.) Provided that a Secretary of State, where it appears to him that any such soldier is a dangerous lunatic, and is in such a state of health as not to be liable to suffer bodily or mental injury by his removal, may, by order signified under his hand, or under the hand of an under-secretary, send such lunatic direct to an asylum, registered hospital, licensed house or other place in which pauper lunatics can legally be confined; and for the purpose of the said order the above-mentioned parish or union shall be deemed to be the parish or union from which such lunatic is sent.

Part II. (3.) In England the lunatic shall be sent to the asylum,
 s. 91. hospital, house, or place to which a person in the workhouse aforesaid, on becoming a dangerous lunatic, can by law be removed ; and an order of the Secretary of State under this section shall be of the same effect as a summary reception order within the meaning of the Lunacy Act, 1890, and the like proceedings shall be taken thereon as on an order under that Act.

53 & 54
 Vict., c. 5.

(4.) The Secretary of State, before making the said order in respect of a lunatic who is liable to be delivered to the inspector of poor of a parish in Scotland, may require the inspector of poor of that parish to specify the asylum to which such lunatic if in the parish would be sent, and it shall be the duty of such inspector forthwith to specify such asylum, and thereupon the Secretary of State may make the said order for sending the lunatic to that asylum ; and such order shall be of the same effect as an order by the sheriff within the meaning of section fifteen of the Lunacy (Scotland) Act, 1862, and the like proceedings shall be taken thereon as on an order under that section.

25 & 26
 Vict., c. 54.

(5.) In the case of any such lunatic who is liable to be delivered at a workhouse in Ireland at which persons settled in the said union are received, a Secretary of State may, by order under his hand, send such lunatic to the asylum of the district in which such union is situate ; and such order shall be of the same effect as a warrant under the hands and seals of two justices given under the provisions of the tenth section of the Act of the session of the thirtieth and thirty-first years of the reign of Her present Majesty, chapter 118, intituled "An Act to provide for the appointment of the officers and servants of district lunatic asylums in Ireland, and to alter and amend the law relating to the custody of dangerous lunatics and dangerous idiots in Ireland."

This section allows a Secretary of State to send a lunatic soldier to the workhouse of the union to which, according to the statements in his attestation paper and other available information, he appears to be chargeable. If the Secretary of State considers the soldier to be a dangerous lunatic, he may order him to be removed direct to the asylum to which the lunatic could be removed if he had been first removed to the workhouse; *i.e.*, in England, to the county or borough asylum.

This section applies to all soldiers, whenever enlisted.

92. (1.) A soldier of the regular forces shall not be discharged from those forces, unless by sentence of court-martial with ignominy, or by order of the competent military authority, or by authority direct from Her Majesty, and until duly discharged in manner provided by this Act and by regulations of the Secretary of State under this Act shall be subject to this Act.

Part II.
ss. 91-92.

Regulations
as to discharge of
soldiers.

(2.) To every soldier of the regular forces who is discharged, for whatever reason he is discharged, there shall be given a certificate of discharge, stating such particulars as may be from time to time required by regulations of a Secretary of State under this Act.

The terms of the attestation of a soldier bind him to serve so long as his services are required. Consequently the Crown has always a right to discharge him if his services are not required. Before a soldier is discharged he receives a certificate of discharge, and a certificate of character; but in certain cases special certificates of discharge are issued in lieu of the ordinary certificates.

Until the formalities of the discharge are completed a soldier remains subject to military law; but any undue delay of the discharge would give good ground for complaint on the part of the soldier.

The certificates of discharge and character are signed by the prescribed authority, and delivered to the man on his last day of service. See chapter X, para. 30, Q.R., Sect. XIX.

This section applies to all soldiers, whenever enlisted.

Part II.

Authorities to enlist and attest Recruits.

ss. 93-94. **93.** A Secretary of State may from time to time make Regulations as to persons to enlist and enlistment of soldiers. and when made revoke and alter, a general or special order, making such regulations, giving such directions, and issuing such forms as he may think necessary or expedient, respecting the persons authorised to enlist recruits for Her Majesty's regular forces, and for the purpose of such enlistment, and generally for carrying this part of this Act into effect ; and any such order shall be of the same effect as if enacted in this Act.

See Q.R., Sect. XIX, and the Recruiting Regulations.

Justices of the peace for the purposes of enlistment

94. For the purposes of the attestation of soldiers in pursuance of this part of this Act :—

An officer in the United Kingdom or elsewhere, if authorised in that behalf under the regulations of a Secretary of State, also every person exercising the office of a magistrate in India or a colony, and also each of the following persons, shall have the authority of a justice of the peace and be deemed to be included in the expression "justice of the peace" wherever used in this part of this Act in relation to the attestation of soldiers ; that is to say,

In India, any person duly authorised in that behalf by the Governor-General ; and in the territories of any native state in India, the person performing the duties of the office of British resident or political agent therein, or any other person authorised in that behalf by the Governor-General of India ; and

In a colony, any person duly authorised in that behalf by the governor of the colony ; and

Beyond the limits of the United Kingdom, India,

and a colony, any British consul-general, Part II.
consul, or vice-consul, or person duly exer- ss. 94-95.
cising the authority of a British consul.

It must be recollected that a justice of the peace can, in most cases, only act when within the county or borough for which he is justice.

The persons named in this section will have authority to attest, but not to enlist or re-engage soldiers, so that consuls, who were formerly authorised by the Mutiny Act to enlist soldiers, no longer have that power, unless expressly authorised by order of the Secretary of State under the last section.

The officers authorised to attest recruits are specified in the *Recruiting Regulations*.

In Ireland a man is not to be taken for attestation before a magistrate appointed under the Town Improvement Act.

For definitions of India and colony, see s. 190 (21) (23).

Special provisions as to Persons to be Enlisted.

95. (1.) Any person who is for the time being an alien may, if Her Majesty think fit to signify her consent through a Secretary of State, be enlisted in Her Majesty's regular forces, so however, that the number of aliens serving together at any one time in any corps of the regular forces shall not exceed the proportion of one alien to every fifty British subjects, and that an alien so enlisted shall not be capable of holding any higher rank in Her Majesty's regular forces than that of a warrant officer or non-commissioned officer : Enlistment of aliens, negroes, &c.

(2.) Provided that, notwithstanding the above provisions of this section, any negro or person of colour, although an alien, may voluntarily enlist in pursuance of this part of this Act, and when so enlisted, shall, while serving in Her Majesty's regular forces, be deemed to be entitled to all the privileges of a natural-born British subject.

See Chapter X, paras. 27, 28.

The proviso to this section enables negroes and persons of colour although aliens to be enlisted without any restriction

Part II. in point of number, as if they were natural-born British subjects.

ss. 95-96. This section will apply to all persons enlisted under the enactments which are replaced by this section.

Claims of
masters to
apprentices.

96. The master of an apprentice in the United Kingdom who has been attested as a soldier of the regular forces may claim him while under the age of twenty-one years as follows, and not otherwise :

- (1.) The master, within one month after the apprentice left his service, must take before a justice of the peace the oath in that behalf specified in the First Schedule to this Act, and obtain from the justice a certificate of having taken such oath, which certificate the justice shall give in the form in the said schedule, or to the like effect :
- (2.) A court of summary jurisdiction within whose jurisdiction the apprentice may be, if satisfied on complaint by the master that he is entitled to have the apprentice delivered up to him, may order the officer under whose command the apprentice is to deliver him to the master, but if satisfied that the apprentice stated on his attestation that he was not an apprentice may, and if required by or on behalf of the said commanding officer shall, try the apprentice for the offence of making such false statement, and if need be may adjourn the case for the purpose :
- (3.) Except in pursuance of an order of a court of summary jurisdiction, an apprentice shall not be taken from Her Majesty's service :
- (4.) An apprentice shall not be claimed in pursuance of this section unless he was bound for at least four years by a regular indenture, and was under the age of sixteen years when so bound :
- (5.) A master who gives up the indenture of his apprentice within one month after the attestation

of such apprentice shall be entitled to receive to his own use so much of the bounty (if any) payable to such apprentice on enlistment as has not been paid to the apprentice before notice was given of his being an apprentice. Part II.
ss. 96-98.

Court of summary jurisdiction. See ss. 166-169 and 190 (34)-(36).

97. The provisions of this part of this Act with respect to apprentices shall apply to a person who at the time of his attestation is an indentured labourer in a colony, with these qualifications, that such indentured labourer, if imported at the expense of the employer or of the colony in consideration of the indenture under which he is serving, may be claimed although above the age of twenty-one years, and though bound for a less period or at an older age than is above specified. Application of ap-
prentice
provisions
to in-
dentured
labourers.

For definition of colony, see s. 190 (23).

Offences as to Enlistment.

98. If a person without due authority—

- (1.) Publishes or causes to be published notices or advertisements for the purpose of procuring recruits for Her Majesty's regular forces, or in relation to recruits for such forces ; or
- (2.) Opens or keeps any house, place of rendezvous, or office as connected with the recruiting of such forces ; or
- (3.) Receives any person under any such advertisement as aforesaid ; or
- (4.) Directly or indirectly interferes with the recruiting service of such forces ;

Penalty on
unlawful
recruiting.

he shall be liable on summary conviction to a fine not exceeding twenty pounds.

On summary conviction, i.e., before magistrates, see ss. 166-169.

Part II. **99.** (1.) If a person knowingly makes a false answer to any question contained in the attestation paper, which has been put to him by or by direction of the justice before whom he appears for the purpose of being attested, he shall be liable on summary conviction to be imprisoned with or without hard labour for any period not exceeding three months.

ss.
99-100.
Recruits
punishable
for false
answers.

(2.) If a person guilty of an offence under this section has been attested as a soldier of the regular forces, he shall be liable, at the discretion of the competent military authority, to be proceeded against before a court of summary jurisdiction, or to be tried by court-martial for the offence.

Sub-section (1). *On summary conviction, i.e., before magistrates, see ss. 166-169.*

Sub-section (2). The offender may be tried and punished in any place where he may for the time being happen to be (s. 159, as to courts-martial, and s. 166 as to civil courts of summary jurisdiction), as well as in the place where the offence was committed; that is to say, where he made the false answer.

Court of summary jurisdiction. See definition in s. 190 (35).

Competent military authority. See definition in s. 101. Rule 127 adds to the definition for the purposes of this section any officer having power to convene a district court-martial for the trial of the soldier.

This section extends to every soldier, whenever enlisted.

Miscellaneous as to Enlistment.

Validity of
attestation
and enlist-
ment or
re-engage-
ment.

100. (1.) Where a person after his attestation on his enlistment, or the making of his declaration on re-engagement, has received pay as a soldier of the regular forces during three months, he shall be deemed to have been duly attested and enlisted or duly re-engaged, as the case may be, and shall not be entitled to claim his discharge on the ground of any error or illegality in his enlistment, attestation, or re-engagement, or on any other ground whatsoever, save as authorised by this Act; and, if within the said three months such person claims his discharge,

any such error or illegality or other ground shall not until such person is discharged in pursuance of his claim affect his position as a soldier in Her Majesty's service, or invalidate any proceedings, act, or thing taken or done prior to such discharge. Part II.
ss.
100-101.

(2.) Where a person is in pay as a soldier in any corps of Her Majesty's regular forces, such person shall be deemed for all the purposes of this Act to be a soldier of the regular forces, with this qualification, that he may at any time claim his discharge, but until he so claims and is discharged in pursuance of that claim he shall be subject to this Act as a soldier of the regular forces legally enlisted and duly attested under this Act.

(3.) Where a person claims his discharge on the ground that he has not been attested or re-engaged or not duly attested or re-engaged, his commanding officer shall forthwith forward such claim to the competent military authority, who shall as soon as practicable submit it to a Secretary of State, and if the claim appears well grounded the claimant shall be discharged with all convenient speed.

Sub-section (2). This meets the case of a man who has been receiving pay without ever having been legally attested or engaged. Such a case should but seldom arise under the present law and practice of enlistment, but if it should (as e.g., if an alien has by making a false answer been enlisted without due authority), the above enactment will effectually prevent a man who has actually served from suddenly repudiating his liability to the rules of the service, and thus evading punishment when charged with or punished for an offence.

Competent military authority. See definition in section 101, and Rule 127.

This section extends to every soldier, whenever enlisted.

101. (1.) Any act or thing authorised or required by this part of this Act to be done by, to, or before the competent military authority may be done by, to, or before the Commander-in-Chief or the Adjutant-General, or any officer prescribed in that behalf. Definition
for purposes
of Part II of
competent
military
authority
and reserve.

Part II. (2.) For the purposes of this part of this Act the expression “reserve” means the first class of the army
 ss. 101-102. reserve force.

Prescribed. See Rule 127, which prescribes for the purposes of this Part of the Act, in addition to the Commander-in-Chief and Adjutant-General, the following officers, namely:—

- (1.) In India, the Commander-in-Chief of the forces in India.
- (2.) In any place situate out of India and out of the United Kingdom, the General or other officer commanding the forces in such place.
- (3.) Also any such officer as may be directed from time to time by Her Majesty's regulations to perform in any place, or for any purpose specified in that behalf, the duty of the competent military authority.

For the purposes of particular sections in this Part, and of transfer by consent, Rule 127 also prescribes other officers.

Army reserve force, i.e., the army reserve under the Reserve Forces Act, 1882, 45 and 46 Vict., c. 48, s. 28.

PART III.

Part III.

BILLETING AND IMPRESSMENT OF CARRIAGES.

See Chapter IX, paras. 114-128. This part relates only to the United Kingdom.

Billeting of Officers and Soldiers.

Suspension
 of 3 Chas. I,
 c. 1;
 31 Chas. II,
 c. 1;
 6 Anne (1),
 c. 14, as to
 billeting.

102. During the continuance in force of this Act, so much of any law as prohibits, restricts, or regulates the quartering or billeting of officers and soldiers on any inhabitant of this realm without his consent is hereby suspended, so far as such quartering or billeting is authorised by this Act.

The Acts suspended by this section are in the case of England **Part III.**
and Ireland those referred to in the marginal note to this section.

103. (1.) Every constable for the time being in charge at any place in the United Kingdom mentioned in the route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or soldier authorised by him, and on production of such route, billet on the occupiers of victualling houses and other premises specified in this Act as victualling houses in that place such number of officers, soldiers, and horses entitled under this Act to be billeted as are mentioned in the route and stated to require quarters.

ss.
103-104.
Obligation of constable to provide billets for officers, soldiers, and horses.

(2.) A route for the purposes of this part of this Act shall be issued under the authority of Her Majesty, signified through a Secretary of State, and shall state the forces to be moved in pursuance of the route, and that statement shall be signed by such officer as the Commander-in-Chief may from time to time order in that behalf.

(3.) A route purporting to be issued and signed as required by this section shall be evidence until the contrary is proved of its having been duly issued and signed in pursuance of this Act, and if delivered to an officer or soldier by his commanding officer shall be a sufficient authority to such officer or soldier to demand billets, and when produced by an officer or soldier to a constable shall be conclusive evidence to such constable of the authority of the officer or soldier producing the same to demand billets in accordance with such route.

Sub-section (1). *Constable*, see s. 120, and note.

Sub-section (3). This sub-section provides that a route shall, so to speak, prove itself, *i.e.*, that it is not to be questioned except on evidence produced to show that it has not been duly issued or signed.

The necessary modifications in the application of this section to the militia, yeomanry, and volunteers are provided in s. 181 (3) (4).

104. (1.) The provisions of this part of this Act with **Liability to**
(M.L.)

Part III. respect to victualling houses shall extend to all inns, hotels, livery stables, or alehouses, also to the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and to all houses of persons selling brandy, spirits, strong waters, cider, or metheglin by retail ; and the occupier of a victualling house, inn, hotel, livery stable, alehouse, or any such house as aforesaid shall be subject to billets under this Act, and is in this Act included under the expression "keeper of a victualling house," and the inn, hotel, house, stables, and premises of such occupier are in this Act included under the expression "victualling house."

s. 104.
provide
billets.

(2.) Provided that an officer or soldier shall not be billeted—

(a.) In any private house ; nor

(b.) In any canteen held or occupied under the authority of a Secretary of State ; nor

(c.) On persons who keep taverns only, being vintners of the City of London admitted to their freedom of the said company in right of patrimony or apprenticeship, notwithstanding the persons who keep such taverns have taken out licences for the sale of any intoxicating liquor ; nor

(d.) In the house of any distiller kept for distilling brandy and strong waters, so as such distiller does not permit tipping in such house ; nor

(e.) In the house of any shopkeeper whose principal dealing is more in other goods and merchandise than in brandy and strong waters, so as such shopkeeper does not permit tipping in such house ; nor

(f.) In a house of a person licensed only to sell beer or cider not to be consumed on the premises ; nor

(g.) In the house of residence of any foreign consul duly accredited as such.

105. (1.) All officers and soldiers of Her Majesty's Part III.
regular forces ; and
- (2.) All horses belonging to Her Majesty's regular **105-106.**
forces ; and
- (3.) All horses belonging to the officers of such forces **ss.**
for which forage is for the time being allowed by **Officers, soldiers, and horses entitled to be billeted.**
Her Majesty's regulations,
- shall be entitled to be billeted.

The men and horses of the militia, yeomanry, and volunteers are, when these forces are subject to military law, entitled to be billeted by virtue of s. 181 (3) (4).

106. (1.) The keeper of a victualling house upon whom any officer, soldier, or horse is billeted shall receive such officer, soldier, or horse in his victualling house, and furnish there the accommodation following : that is to say, lodging and attendance for the officer ; and lodging, attendance, and food for the soldier ; and stable room and forage for the horse, in accordance with the provisions of the Second Schedule to this Act. **Accommodation and payment on billet.**

(2.) Where the keeper of a victualling house on whom any officer, soldier, or horse is billeted desires, by reason of his want of accommodation or of his victualling house being full or otherwise, to be relieved from the liability to receive such officer, soldier, or horse in his victualling house, and provides for such officer, soldier, or horse in the immediate neighbourhood such good and sufficient accommodation as he is required by this Act to provide, and as is approved by the constable issuing the billets, he shall be relieved from providing the same in his victualling house.

(3.) There shall be paid to the keeper of a victualling house for the accommodation furnished by him in pursuance of this Act the prices for the time being authorised in this behalf by Parliament.

(4.) An officer or soldier demanding billets in pursuance of this Act shall, before he departs, and if he remains longer than four days, at least once in every four days, pay
(M.L.) 2 H 2

Part III. the just demands of every keeper of a victualling house on whom he and any officers and soldiers under his command, and his or their horses (if any), have been billeted.

ss.

106-107.

(5.) If by reason of a sudden order to march, or otherwise, an officer or soldier is not able to make such payment to any keeper of a victualling house as is above required, he shall before he departs make up with such keeper of a victualling house an account of the amount due to him, and sign the same, and forthwith transmit the account so signed to a Secretary of State, who shall forthwith cause the amount named in such account as due to be paid.

Sub-section (1). The details respecting the food and forage to be furnished are contained in the second schedule: the prices to be paid are contained in the annual Act continuing this Act in force.

Sub-section (2). This sub-section shows clearly the obligation of the innkeeper to provide elsewhere accommodation for a soldier or horse billeted on him if he has not got it on his own premises, or if by reason of his house being full or otherwise, he desires to be rid of the liability. The constable is made judge of the sufficiency of the substituted accommodation.

**Annual list
of keepers of
victualling
houses
liable to
billets.**

107. (1.) The police authority for any place may cause annually a list to be made out of all keepers of victualling houses within the meaning of this Act in such place, or any particular part thereof, liable to billets under this Act, specifying the situation and character of each victualling house, and the number of soldiers and horses who may be billeted on the keeper thereof.

(2.) The police authority shall cause such list to be kept at some convenient place open for inspection at all reasonable times by persons interested, and any person who feels aggrieved either by being entered in such list, or by being entered to receive an undue proportion of officers, soldiers, or horses, may complain to a court of summary jurisdiction, and the court, after such notice as the court think necessary to persons interested, may order the list to be amended in such manner as the court may think just.

Sub-section (1). *Police authority.* See definition in s. 190 (39). Part III. See also s. 120.

The list merely determines the proportion in which the billets are to be distributed among the keepers of victualling houses, and does not relieve them from their liability to find accommodation for any number for whom quarters are required. *Sharratt v. Scotney.* L.R., 1892. 2 Q.B., 479.

ss.
107-108.

108. The following regulations shall be observed with respect to billeting in pursuance of this Act ; that is to say, Regulations as to grant of billets.

- (1.) No more billets shall at any time be ordered than there are effective officers, soldiers, and horses present to be billeted :
- (2.) All billets, when made out by the constable, shall be delivered into the hands of the commanding officer or non-commissioned officer who demanded the billets, or of some officer authorised by such commanding officer :
- (3.) If a keeper of a victualling house feels aggrieved by having an undue proportion of officers, soldiers, or horses billeted on him, he may apply to a justice of the peace, or if the billets have been made out by a justice may complain to a court of summary jurisdiction, and the justice or court may order such of the officers, soldiers, or horses to be removed and to be billeted elsewhere as may seem just :
- (4.) A constable having authority in a place mentioned in the route may act for the purposes of billeting in any locality within one mile from such place, unless some constable ordinarily having authority in such locality is present and undertakes to billet therein the due proportion of officers, soldiers, and horses :
- (5.) The regulations with respect to billets contained in the Second Schedule to this Act shall be duly observed by the constable :
- (6.) A justice of the peace, on the request of an officer

Part III.

ss.

106-109.

or non-commissioned officer authorised to demand billets, may vary a route by adding any place or omitting any place, and also may direct billets to be given above one mile from a place mentioned in the route :

- (7.) A justice of the peace may require a constable to give an account in writing of the number of officers, soldiers, and horses billeted by such constable, together with the names of the keepers of victualling houses on whom such officers, soldiers, and horses are billeted, and the locality of such victualling houses.

Sub-section (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

Offences in relation to Billeting.

Offences by
constables.

109. If a constable commits any of the offences following ; that is to say,

- (1.) Billets any officer, soldier, or horse on any person not liable to billets without the consent of such person ; or
- (2.) Receives, demands, or agrees for any money or reward whatsoever to excuse or relieve a person from being entered in a list as liable or from his liability to billets, or from any part of such liability ; or
- (3.) Billets or quarters on any person or premises, without the consent of such person or the occupier of such premises, any person or horse not entitled to be billeted ; or
- (4.) Neglects or refuses after sufficient notice is given to give billets demanded for any officer, soldier, or horse entitled to be billeted ;

he shall, on summary conviction, be liable to a fine of not less than forty shillings, and not exceeding ten pounds.

On summary conviction. See ss. 166-168.

110. If a keeper of a victualling house commits any of **Part II** the offences following; that is to say,

- (1.) Refuses or neglects to receive any officer, soldier, or horse billeted upon him in pursuance of this Act, or to furnish such accommodation as is required by this Act; or **110-111.**
Offences by keepers of victualling houses.
- (2.) Gives or agrees to give any money or reward to a constable to excuse or relieve him from being entered in a list as liable or from his liability to billets, or any part of such liability; or
- (3.) Gives or agrees to give to any officer or soldier billeted upon him in pursuance of this Act any money or reward in lieu of receiving an officer, soldier, or horse, or furnishing the said accommodation;

he shall, on summary conviction, be liable to a fine of not less than forty shillings and not exceeding five pounds.

On summary conviction. See ss. 166-168.

111. (1.) If any officer quarters or causes to be billeted any officer, soldier, or horse otherwise than he is allowed by this Act upon any person, he shall be guilty of a misdemeanor. Offences by officers or soldiers.

(2.) If any officer or soldier commits any offence in relation to billeting for which he is liable to be punished under Part One of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved, he shall, upon summary conviction, be liable to a fine not exceeding fifty pounds.

(3.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

This section punishes with a fine on summary conviction all the offences in relation to billeting which have been made military offences by s. 30, except those for which the injured person can

Part III. obtain compensation through a court of summary jurisdiction under s. 119.

ss.

111-112.

Impressment of Carriages.

Supply of
carriages,
&c., for
regimental
baggage and
stores on
the march.

112. (1.) Every justice of the peace in the United Kingdom having jurisdiction in any place mentioned in a route issued to the commanding officer of any portion of Her Majesty's regular forces shall, on the demand of such commanding officer, or of an officer or non-commissioned officer authorised by him, and on production of such route, issue his warrant requiring some constable or constables having authority in such place to provide, within a reasonable time to be named in the warrant, such carriages, animals, and drivers as are stated to be required for the purpose of moving the regimental baggage and regimental stores of the forces mentioned in the route in accordance with the route; and the constable or constables shall execute such warrant, and persons having carriages and animals suitable for the said purpose shall, when ordered by a constable in pursuance of such warrant, furnish the same in a state fit for use for the aforesaid purpose.

(2.) The route for the purpose of this section shall be such route as is mentioned in the foregoing provisions of this part of this Act with respect to billeting.

(3.) A route purporting to be issued and signed as required by those provisions, if delivered to an officer or non-commissioned officer by his commanding officer, shall be a sufficient authority to such officer or non-commissioned officer to demand carriages and animals in pursuance of this Act, and when produced by an officer or non-commissioned officer shall be conclusive evidence to a justice and constable of the authority of the officer or non-commissioned officer producing the same to demand carriages and animals in accordance with such route.

(4.) The warrant ordering carriages, animals, and drivers to be provided shall specify the number and description of the carriages, and also the places from and to which the same are to travel, and the distances between such places.

(5.) When sufficient carriages or animals cannot be procured within the jurisdiction of the said justice, any justice having jurisdiction in the next adjoining place shall, by a like course of proceeding, supply the deficiency.

(6.) A fee of one shilling and no more shall be paid for the warrant by the officer or non-commissioned officer applying for the same, and shall be paid to the clerk of the justice.

See, generally, as to impressment of carriages, Chapter IX, paras. 129-134.

Sub-section (1). The same route is in practice used to obtain both billets and carriages.

For the purpose of moving the regimental baggage and stores. Carriages can only be impressed for this purpose, and use of them for any other purpose is penal (s. 31 (5)), except in cases of emergency, which are provided for by s. 115. The term "carriage" has not in this Act the popular meaning of a conveyance for persons only, but means a waggon, cart, or any vehicle suitable for carrying baggage.

113. (1.) There shall be paid in respect of the carriages and animals furnished in pursuance of this part of this Act the rates specified in the Third Schedule to this Act and the regulations contained in that schedule with respect to the carriages and animals furnished shall be duly observed.

Payment for and regulations as to carriages, animals, &c.

(2.) The following authorities; that is to say,

(a.) In England, the court of general or quarter sessions of a county or of a borough subject to the Municipal Corporations Act, 1882; and

45 & 46
Vict., c. 50.

(b.) In Scotland, the commissioners of supply

Part III.

s. 113.

of a county, or the magistrates of a Royal or Parliamentary burgh ; and

- (c.) In Ireland, the grand jury for a county, a county of a city, a county of a town and city, or a city or town and county, also any council of any such county, town, or city having by law the fiscal powers of a grand jury,

may from time to time, as respects places within their jurisdiction, by order increase the rates authorised in the said schedule by such amount in respect of each rate, not exceeding one-third, as may seem reasonable, and the amount of such increase shall be notified in writing by the justice granting a warrant in pursuance of this Act to the person demanding the warrant.

(3.) The order shall specify the average price of hay and oats at the nearest market town at the time of fixing such increased rates, and the order shall not be in force for more than ten days beyond the next meeting of such authority, but may be renewed from time to time by a fresh order or orders, and while in force shall have effect as part of the said schedule.

(4.) A copy of every such order, duly authenticated, shall be transmitted to a Secretary of State within three days after the making thereof.

(5.) The officer or non-commissioned officer who demands carriages or animals in pursuance of this part of this Act shall pay the sums due in respect of the same to the owners or drivers of the carriages or animals, and one-third part of such payment shall in each case, if required, be made before the carriage is loaded ; and such payments shall be made, if required, in the presence of a justice or constable.

(6.) If an officer or non-commissioned officer is from any cause unable to pay the amount due to the owner or driver of any carriage or animal, he shall make up with such

owner or driver and sign an account of the amount due **Part III.**
to him, and forthwith transmit the account so signed to a **ss.**
Secretary of State, who shall forthwith cause the amount **113-115.**
named therein to be paid to such owner or driver.

114. (1.) The police authority for any place may cause **Annual list of persons liable to supply carriages.**
annually a list to be made out of all persons in such place,
or any particular part thereof, liable to furnish carriages
and animals under this Act, and of the number and
description of the carriages and animals of such persons ;
and where a list is so made, any justice may by warrant
require any constable or constables having authority
within such place to give from time to time, on demand
by an officer or non-commissioned officer under this Act,
orders to furnish carriages and animals, and such
warrant shall be executed as if it were a special warrant
issued in pursuance of this Act on such demand, and the
orders shall specify the like particulars as such special
warrant.

(2.) The police authority shall cause such list to be kept
at some convenient place open for inspection at all reason-
able times by persons interested, and any person who
feels aggrieved either by being entered in such list, or by
being entered to furnish any number or description of
carriages or animals which he is not liable to furnish, may
complain to a court of summary jurisdiction, and the court,
after such notice as the court think necessary to persons
interested, may order the list to be amended, in such
manner as the court may think just.

(3.) All orders given by constables for furnishing
carriages and animals shall, as far as possible, be made
from such list in regular rotation.

Police authority. For definition see s. 190 (39).

115. (1.) Her Majesty by order, distinctly stating that **Supply of carriages and vessels in case of emergency.**
a case of emergency exists, and signified by a Secretary of
State, and also in Ireland the Lord Lieutenant by a like
order, signified by the Chief Secretary or Under Secretary,

Part III. may authorise any general or field officer commanding
s. 115. Her Majesty's regular forces in any military district or place in the United Kingdom to issue a requisition under this section (hereinafter referred to as a requisition of emergency).

(2.) The officer so authorised may issue a requisition of emergency under his hand, reciting the said order, and requiring justices of the peace to issue their warrants for the provision, for the purpose mentioned in the requisition, of such carriages and animals as may be provided under the foregoing provisions, and also of carriages of every description, and of horses of every description, whether kept for saddle or draught, and also of vessels (whether boats, barges, or other) used for the transport of any commodities whatsoever upon any canal or navigable river.

(3.) A justice of the peace, on demand by an officer of the portion of Her Majesty's forces mentioned in a requisition of emergency, or by an officer of a Secretary of State authorised in this behalf, and on production of the requisition, shall issue his warrant for the provision of such carriages, animals, and vessels as are stated by the officer producing the requisition of emergency to be required for the purpose mentioned in the requisition; the warrant shall be executed in the like manner, and all the provisions of this Act as to the provision or furnishing of carriages and animals, including those respecting fines on officers, non-commissioned officers, justices, constables, or owners of carriages, or animals, shall apply in like manner as in the case where a justice issues, in pursuance of the foregoing provisions of this Act, a warrant for the provision of carriages and animals, and shall apply to vessels as if the expression carriages included vessels.

(4.) A Secretary of State shall cause due payment to be made for carriages, animals, and vessels furnished in pursuance of this section, and any difference respecting the

amount of payment for any carriage, animal, or vessel shall be determined by a county court judge having jurisdiction in any place in which such carriage, animal, or vessel was furnished or through which it travelled in pursuance of the requisition. Part III.
s. 115.

(5.) Canal, river, or lock tolls are hereby declared not to be demandable for vessels while employed in any service in pursuance of this section or returning therefrom. And any toll collector who demands or receives toll in contravention of this exemption, shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

(6.) A requisition of emergency, purporting to be issued in pursuance of this section, and to be signed by an officer therein stated to be authorised in accordance with this section, shall be evidence, until the contrary is proved, of its being duly issued and signed in pursuance of this Act, and if delivered to an officer of Her Majesty's forces or of a Secretary of State shall be a sufficient authority to such officer to demand carriages, animals, and vessels in pursuance of this section, and when produced by such officer shall be conclusive evidence to a justice and constable of the authority of such officer to demand carriages, animals, and vessels in accordance with such requisition; and it shall be lawful to convey on such carriages, animals, and vessels, not only the baggage, provisions, and military stores of the troops mentioned in the requisition of emergency, but also the officers, soldiers, servants, women children, and other persons of and belonging to the same.

(7.) Whenever an order for the embodiment of the militia is in force, the order of Her Majesty authorising an officer to issue a requisition of emergency may authorise him to extend such requisition to the provision of carriages, animals, and vessels for the purpose of being purchased, as well as of being hired, on behalf of the Crown.

(8.) Where a justice on demand by an officer and on

Part III. production of a requisition of emergency, has issued his
 ss. warrant for the provision of any carriages, animals, or
 115-116. vessels, and any person ordered in pursuance of such
 warrant to furnish a carriage, animal, or vessel refuses or
 neglects to furnish the same according to the order, then,
 if an order for the embodiment of the militia is in force,
 the said officer may seize (and if need be by force) the
 said carriage, animal, or vessel, and may use the same in
 like manner as if it had been furnished in pursuance of
 the order, but the said person shall be entitled to payment
 for the same in like manner as if he had duly furnished
 the same according to the order.

Carriages and horses of every description and barges and other
 vessels used in inland navigation may under this section be im-
 pressed for any military purposes mentioned in the requisition
 signed by the general or field officer in command; and may there-
 fore be impressed for the conveyance of persons as well as of
 baggage. The expression "horses" includes mules and other
 beasts of burden or draught, s. 190 (40). For "carriage," see
 note to s. 112.

Sub-section (4). *County Court Judge.* For definition as respects
 Scotland and Ireland, see s. 190 (37).

Sub-section (6). The requisition of emergency is made to prove
 itself so to speak; see note to s. 103.

Sub-sections (7) and (8) were added by the National Defence
 Act, 1888 (51 & 52 Vict., c. 31).

Offences in relation to the Impressment of Carriages.

Offences by
 constables.

116. Any constable who—

- (1.) Neglects or refuses to execute any warrant of a
 justice requiring him to provide carriages, animals,
 or vessels; or
- (2.) Receives, demands, or agrees for any money or
 reward whatsoever to excuse or relieve any
 person from being entered in a list as liable to
 furnish, or from being required to furnish, or
 from furnishing any carriage, animal, or vessel;
 or

- (3.) Orders any carriage, animal, or vessel to be furnished for any person or purpose or on any occasion for and on which it is not required by this Act to be furnished ;

shall, on summary conviction, be liable to a fine of not less than twenty shillings nor more than twenty pounds.

On summary conviction. See ss. 166-168.

117. A person ordered by any constable in pursuance of this Act to furnish a carriage, animal, or vessel who—

Offences by persons ordered to furnish carriages, animals, or vessels.

- (1.) Refuses or neglects to furnish the same according to the orders of such constable and this Act ; or

- (2.) Gives or agrees to give to a constable or to any officer or non-commissioned officer any money or reward whatsoever to be excused from being entered in a list as liable to furnish, or from being required to furnish, or from furnishing, or in lieu of furnishing, any carriage, animal, or vessel in pursuance of this Act ; or

- (3.) Does any act or thing by which the execution of any warrant or order for providing or furnishing carriages, animals, or vessels is hindered,

shall, on summary conviction, be liable to pay a fine of not less than forty shillings nor more than ten pounds.

On summary conviction. See ss. 166-168.

118. (1.) Any officer or soldier who commits any offence in relation to the impressment of carriages for which he is liable to be punished under Part I of this Act, other than an offence in respect of which any other remedy is given by this part of this Act to the person aggrieved,

Offences by officers or soldiers.

shall, on summary conviction, be liable to a fine not exceeding fifty pounds nor less than forty shillings.

(2.) A certificate of a conviction for an offence under this section shall be transmitted by the court making such conviction to a Secretary of State.

Part III. This section punishes with a fine on summary conviction (ss. 166–168) the offences committed by officers and soldiers in respect of impressment of carriages, which are made military offences by s. 31, except those for which compensation can be recovered through a court of summary jurisdiction, under s. 119.

ss.

118–119.

For definition of court of summary jurisdiction, see s. 190 (35).

Supplemental Provisions as to Billeting and Impressment of Carriages.

Application
to court of
summary
jurisdiction
respecting
sums due to
keepers of
victualling
houses or
owners of
carriages,
&c.

119. (1.) The following persons, that is to say,

(a.) If any officer or soldier fails to comply with the provisions of this part of this Act with respect to the payment of a sum due to a keeper of a victualling house or in respect of carriages or animals, or to the making up of an account of the sum due, the person to whom the sum is due; or

(b.) If a keeper of a victualling house suffers any ill-treatment by violence, extortion, or making disturbance in billets from any officer or soldier billeted upon him, or if the owner or driver of any carriage, animal, or vessel furnished in pursuance of this part of this Act suffers any ill-treatment from any officer or soldier, the person suffering such ill-treatment, but, when there is an officer commanding such officer or soldier present at the place, only after first making due complaint, if practicable, to such commanding officer,

may apply to a court of summary jurisdiction, and such court, if satisfied on oath of such failure or such ill-treatment, and of the amount fairly due to the applicant, including the costs of his application to the court of summary jurisdiction, shall certify the same to a Secretary of State, who shall forthwith cause the amount due to be paid.

¶ (2.) Provided that the Secretary of State, if it appear to

him that the amount named in such certificate is not justly due, or is in excess of the amount justly due, may direct a complaint to be made to a court of summary jurisdiction for the county, borough, or place for which the court giving the certificate acted, and the court after hearing the case may by order confirm the said certificate, or vary it in such manner as to the court seems just.

This section allows an innkeeper or owner of an impressed carriage aggrieved by the non-payment of a sum due to him, or by ill-treatment on the part of an officer or soldier, on failure to obtain redress from the commanding officer, to apply to a court of summary jurisdiction, who may certify to the Secretary of State the amount which should be paid.

For definition of court of summary jurisdiction, see s. 190 (35).

120. (1.) A constable shall observe the directions given to him for the due execution of this part of this Act by the police authority; and the police authority, or any member thereof, and every justice of the peace may, if it seem necessary, and in the absence of a constable shall, themselves or himself exercise the powers and perform the duties by this part of this Act vested in or imposed on a constable, and in such case every such person is in this part of this Act included in the expression "constable."

Provisions
as to
constables,
police
authorities,
and justices.

(2.) A person having or executing any military office or commission in any part of the United Kingdom shall not, directly or indirectly, be concerned, as a justice or constable, in the billeting of or appointing quarters for any officer or soldier or horse of the corps, or part of a corps, under his immediate command, and all warrants, acts, and things made, done and appointed by such person for or concerning the same shall be void.

Sub-section (1). *Police authority.* See definition in s. 190 (39).

The duty of billeting is thrown by this Act on the police, as successors to the parish constables who formerly had that duty. In practice, in those places where troops are frequently passing, there are officers commonly known as billet masters, who have the management of the billeting.

Part III. 121. If any person—

ss.

121-122.
Fraudulent
claim for
carriages,
animals, &c.

- (1.) Forges or counterfeits any route or requisition of emergency, or knowingly produces to a justice or constable any route or requisition of emergency so forged or counterfeited ; or
- (2.) Personates or represents himself to be an officer or soldier authorised to demand any billet, or any carriage, animal, or vessel, or to be entitled to be billeted, or to have his horse billeted ; or
- (3.) Produces to a justice or constable a route or requisition which he is not authorised to produce, or a document falsely purporting to be a route or requisition,

he shall be liable, on summary conviction, to imprisonment for a period not exceeding three months, with or without hard labour, or to a fine not less than twenty shillings and not more than five pounds.

On summary conviction. See ss. 166-168.

Part IV.

PART IV.

GENERAL PROVISIONS.

Supplemental Provisions as to Courts-Martial.

Royal
warrant
required for
convening
and con-
firming
general
courts-
martial:

122. (1.) Her Majesty may, subject to the provisions of this Act, by any warrant or warrants under Her Sign Manual, in such form as Her Majesty may from time to time direct, from time to time—

- (a.) Convene or authorise any qualified officer to convene a general court-martial for the trial, under this Act, of any person subject to military law ; and
- (b.) Give a general authority to any qualified officer to

convene general courts-martial for the trial, under this Act, of such persons subject to military law as may for the time being be under or within the territorial limits of his command ; and

Part IV.
s. 122.

- (c.) Empower any qualified officer to delegate to any officer under his command not below the degree of field officer, a general authority to convene general courts-martial for the trial under this Act, of such persons subject to military law, as are for the time being under or within the territorial limits of his command ; and
- (d.) Reserve for confirmation by Her Majesty, or empower any qualified officer to confirm, the findings and sentences of general courts-martial ; and
- (e.) Empower any officer for the time being authorised to confirm the findings and sentences of general courts-martial to reserve for confirmation findings or sentences of general courts-martial, or to delegate a power of confirming such findings or sentences to any officer under his command not below the degree of field officer ; and
- (f.) Revoke any warrant for the time being in force, or any part of any warrant, leaving the remainder in full force ;

Provided that where it appears to Her Majesty that in any place out of the United Kingdom, where no field officer is for the time being in command, hardship would be inflicted on persons accused of offences by reason of there being no means of speedily trying such persons for offences, a warrant under this section may empower an officer to delegate to an officer not below the degree of captain any authority and power authorised under this section to be delegated to a field officer.

(2.) The same officer may or may not be appointed convening and confirming officer.

(M.L.)

Part IV. (3.) The power of convening general courts-martial, and of confirming the findings and sentences of general courts-martial, or either of such powers, may be granted subject to such restrictions, reservations, exceptions, and conditions as to Her Majesty may seem meet, and when delegated by any officer empowered in that behalf may, subject to the provisions of any warrant granting him such power, be delegated subject to such restrictions, reservations, exceptions and conditions as to such officer may seem fit.

ss.
122-123.

(4.) Warrants under this section may be addressed to officers by name or by designation of their offices, or partly in one way and partly in the other, and any warrant may or may not, according to the terms of such warrant and the mode in which the same is addressed, be limited to an officer named, or be extended to a person for the time being performing the duties of the office named, or be extended to the successors in command of an officer.

(5.) Any warrant of Her Majesty issued in pursuance of this section shall be of the same force as if the provisions thereof were enacted by this Act.

(6.) "Qualified officer" for the purposes of this Act, in so far as it relates to convening or confirming the findings and sentences of general courts-martial, means the Commander-in-Chief and any officer not below the rank of a field officer commanding for the time being any body of the regular forces either within or without Her Majesty's dominions; it also includes the Lord Lieutenant of Ireland, the Governor-General of India, and a Governor of any colony on whom the command of any body of regular forces may be conferred by Her Majesty.

See Chapter V, paras. 19-23 and 91-95.

Authority
of officer
empowered
to convene
general

123. (1.) Any officer or person authorised to convene general courts-martial may—

(a.) Convene a district court-martial for the trial under

this Act of any person under his command who is subject to military law ; and

(b.) Empower any person under his command not

below the rank of captain to convene a district court-martial for the trial under this Act of any person under the command of such last-mentioned officer who is subject to military law ; and

(c.) Confirm the finding and sentence of any district court-martial, or empower any officer whom he has power to authorise to convene district courts-martial to confirm the finding and sentence of any district court-martial.

(2.) The same officer may or may not be appointed convening and confirming officer under this section.

(3.) The power of convening, and of confirming the findings and sentences of district courts-martial, or either of such powers, may be granted under this section, subject to such restrictions, reservations, exceptions, and conditions as to the officer granting such power may seem meet.

(4.) Any authority under this section for convening district courts-martial may be addressed to an officer by name or by designation of his office, or partly in one way and partly in the other, and may or may not, according to the terms thereof and the mode in which the same is addressed, be limited to an officer named, or be extended to a person holding for the time being or performing the duties of the office, or be extended to the successors in command of such officer.

124. Any person tried by a court-martial shall be entitled, on demand, at any time in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to obtain from the officer or person having the custody of proceed-

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ss.

123-124.

courts-martial required for convening and confirming district courts-martial.

Right of person tried to copy of proceedings of court-martial.

Part IV. ings of such court a copy thereof, including the proceedings with respect to the revision and confirmation thereof,
 ss.
124-126. upon payment for the same at the prescribed rate, not exceeding twopence for every folio of seventy-two words; and for the purposes of this section the proceedings of courts-martial shall be preserved in the prescribed manner.

Prescribed rate. See Rule 93. If an application is made for a copy of part only of the proceedings, it should be complied with.

Prescribed manner. See Rule 97.

Summoning
and privilege
of
witnesses at
courts-
martial.

125. (1.) Every person required to give evidence before a court-martial may be summoned or ordered to attend in the prescribed manner.

(2.) Every person attending in pursuance of such summons or order as a witness before any court-martial shall, during his necessary attendance in or on such court, and in going to and returning from the same, have the same privilege from arrest as he would have if he were a witness before a superior court of civil jurisdiction.

Prescribed manner. See Rule 78.

Privilege from arrest. This privilege is from arrest on civil process, as, e.g., for debt, while going to the place of trial, attending there, and returning home, or as it is expressed, *eundo, morando, redeundo*. There is no privilege from arrest on any criminal process, as, e.g., on a charge for a crime. The courts are disposed to be liberal in determining what is reasonable time for going, staying, or returning; thus, a witness in a cause tried on Friday and arrested on Saturday evening when entering the coach to return home was held to be improperly arrested. The remedy for an improper arrest is to apply to the court on whose process the arrest took place, or to apply for a *habeas corpus*.

Misconduct
of civilian
at court-
martial.

126. (1.) Where any person who is not subject to military law commits any of the following offences, that is to say,

(a.) On being duly summoned as a witness before a court-martial, and after payment or tender of the

reasonable expenses of his attendance, makes default in attending ; or

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s. 126.

(b.) Being in attendance as a witness—

(i.) Refuses to take an oath legally required by a court-martial to be taken ; or

(ii.) Refuses to produce any document in his power or control legally required by a court-martial to be produced by him ; or

(iii.) Refuses to answer any question to which a court-martial may legally require an answer,

the president of the court-martial may certify the offence of such person under his hand to any court of law in the part of Her Majesty's dominions where the offence is committed which has power to punish witnesses if guilty of like offences in that court, and that court may thereupon inquire into such alleged offence, and after examination of any witnesses that may be produced against or for the person so accused, and after hearing any statement that may be offered in defence, if it seem just, punish such witness in like manner as if he had committed such offence in a proceeding in that court.

(2.) Where a person not subject to military law when examined on oath or solemn declaration before a court-martial wilfully gives false evidence, he shall be liable on indictment or information to be convicted of and punished for the offence of perjury, or the offence by whatever name called in the part of Her Majesty's dominions in which the offence is tried which, if committed in England, would be perjury.

(3.) Where a person not subject to military law is guilty of any contempt towards a court-martial, by using insulting or threatening language, or by causing any interruption or disturbance in its proceedings, or by printing observations or using words calculated to influence the members of or witnesses before such court, or to bring such court into disrepute, the president of the

Part IV. court-martial may certify the offence of such person, under his hand, to any court of law in the part of Her
 ss.
126-128. Majesty's dominions where the offence is committed which has power to commit for contempt, and that court may thereupon inquire into such alleged offence, and after hearing any witnesses that may be produced against or on behalf of the person so accused, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of such person in like manner as if he had been guilty of contempt of that court.

Sub-section (3). The object of this sub-section is to enable courts-martial to obtain the punishment of civilians guilty of contempt of court. Usually exclusion from the court will be the best mode of dealing with the case; care being taken not to use any unnecessary force. If it is requisite to apply to a court, the application should be made in England or Ireland to the High Court of Justice; and in Scotland to the Court of Session.

The certificate need not be in any particular form; but should be addressed to the court to which the certificate is to be sent, and should state the name, address, and description of the person who has committed the offence, and the offence which he has committed. It will usually be desirable to make a formal application to the court to act upon the certificate.

Court-martial governed by English law only.

127. A court-martial under this Act shall not, as respects the conduct of its proceedings, or the reception or rejection of evidence, or as respects any other matter or thing whatsoever, be subject to the provisions of the Indian Evidence Act, 1872, or to any Act, law, or ordinance of any legislature whatsoever other than the Parliament of the United Kingdom.

A soldier, wherever he goes, carries with him the military law of his country, that is to say, the Army Act. The Indian Evidence Act, 1872, enacted that the law of evidence of that country should apply to courts-martial, and by inadvertence this was made apparently to apply to British courts-martial, consequently it was thought necessary to reverse the Indian enactment.

Rules of evidence to be the same as in civil courts.

128. The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are

followed in civil courts in England ; and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court. Part IV
ss.
128-129.

Practically this section is merely a declaration of the law, as even without it, military courts would be bound to follow the rules of evidence in civil courts. As to evidence generally, see Chapter VI.

129. Whereas it is expedient to make provision respecting the conduct of counsel when appearing on behalf of the prosecution or defence at courts-martial in pursuance of rules under this Act, be it therefore enacted as follows :

Position of
counsel at
courts-
martial.

(1.) Any conduct of a counsel which would be liable to censure, or a contempt of court, if it took place before Her Majesty's High Court of Justice in England, shall likewise be deemed liable to censure, or a contempt of court, in the case of a court-martial ; and the rules laid down for the practice of courts-martial and the guidance of counsel shall be binding on counsel appearing before such courts-martial, and any wilful disobedience of such rules shall be professional misconduct, and, if persevered in, be deemed a contempt of court.

(2.) Where a counsel is guilty of conduct liable to censure, or a contempt of court, such offence shall be deemed to be an offence within the meaning of section one hundred and twenty-six of this Act, and the president of the court-martial may certify the same to a court of law accordingly ; and the court of law to which the same is certified shall deal with such offence in the same manner as if it had been committed in a proceeding before that court.

(3.) A court-martial may, by order under the hand of the president, cause a counsel to be removed from the court who is guilty of such an offence as may, in the opinion of the court-martial, require his removal from court, but in every such case the president shall certify the

Part IV. offence committed to a court of law in manner provided by the above-mentioned section.

ES.

129-130.

See as to counsel, Rules 87 to 93.

Sub-section (3). The removal of a counsel from the court could only become requisite under very grave circumstances.

Provision in
case of
insane
persons.

130. (1.) Where it appears on the trial by court-martial of a person charged with an offence that such person is by reason of insanity unfit to take his trial, the court shall find specially that fact ; and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known, or until any earlier time at which such person is fit to take his trial.

(2.) Where on the trial by court-martial of a person charged with an offence it appears that such person committed the offence, but that he was insane at the time of the commission thereof, the court shall find specially the fact of his insanity, and such person shall be kept in custody in the prescribed manner until the directions of Her Majesty thereon are known.

(3.) In either of the above cases Her Majesty may give orders for the safe custody of such person during her pleasure in such place and in such manner as Her Majesty thinks fit.

(4.) A finding under this section shall be subject to confirmation in like manner as any other finding.

(5.) If a person imprisoned by virtue of this Act becomes insane, then, without prejudice to any other provision for dealing with such insane prisoner, a Secretary of State in any case, and in the case of a prisoner confined in India the Governor-General of India, or the Governor of any presidency in which the person is confined, and in the case of a prisoner confined in a colony the Governor of that colony may, upon a certificate of such insanity by two qualified medical practitioners, order the removal of such prisoner to an asylum or other proper place for the reception of insane persons in the United Kingdom, India, or

the colony, according as the prisoner is confined in the United Kingdom, India, or the colony, there to remain for the unexpired term of his imprisonment, and upon such person being certified in the like manner to be again of sound mind, may order his removal to any prison in which he might have been confined if he had not become insane, there to undergo the remainder of such punishment (a).

Part IV.

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130-131.

This section provides for dealing with insane persons who stand charged with offences, and with prisoners who become insane. Similar provisions are contained in ss. 68, 80 of the Naval Discipline Act, 29 & 30 Vict. c. 109.

Sub-section (2). *Prescribed.* See Rule 57 (C) and note.

Sub-section (5). *Imprisoned by virtue of this Act.* This refers only to persons imprisoned under sentence, and not to persons in custody awaiting trial.

General Provisions as to Prisons.

131. (1.) A Secretary of State may from time to time make arrangements with the Governor-General of India or the Governor of a colony for the reception in any prison in India or in such colony of prisoners under this Act, and of deserters or absentees without leave from Her Majesty's service, on payment of such sums as are provided by the arrangement, and the governor of any prison to which any such arrangement relates shall be under the same obligation as the governor of a prison in the United Kingdom to receive and detain such prisoners, deserters, and absentees without leave :

Arrange-
ments with
Indian and
colonial
govern-
ments as to
prisons.

(2.) Provided that where a prisoner has been sentenced in India or in a colony to a term of imprisonment exceeding twelve months, or to a term of penal servitude, he shall be transferred as soon as practicable to a prison or convict establishment within the United Kingdom, unless in the case of imprisonment the court shall for special reasons otherwise order, there to undergo his sentence, or

(a) So much of this sub-section as relates to a person imprisoned in England is repealed by the Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64).

Part IV. unless he belongs to a class with respect to which a
s. 131. Secretary of State has declared that, by reason of the climate or place of his birth or the place of his enlistment, or otherwise, it is not beneficial to the prisoner to transfer him to the United Kingdom ; every such declaration shall be laid before both Houses of Parliament.

(3.) Any order which can be made under this section by the court may be made by the confirming authority in confirming the finding and sentence, and in the case of any commutation or remission of sentence, may be made by the authority commuting or remitting the sentence.

Under s. 60 an offender sentenced to penal servitude in India or a colony must be sent to a penal servitude prison as soon as practicable, to undergo his sentence, and under this section, that prison must be in the United Kingdom, unless he belongs to a class to which a declaration of the Secretary of State, made under this section, is applicable. An offender sentenced to imprisonment in India or a colony must also, if his term of imprisonment exceeds twelve months, be sent home to undergo his sentence, unless he belongs to such class as aforesaid, or unless the court which tried him, or the authority confirming or commuting or remitting the sentence for special reasons otherwise order.

Under this section the Secretary of State has made general regulations dated October, 1881, declaring that it is not beneficial to any of the following classes to be transferred to the United Kingdom when under sentence of penal servitude or imprisonment.

- (1.) By reason of climate :—
 - a. Asiatics and Africans.
 - b. Other persons of colour.
- (2.) By reason of place of birth :—
 - c. Persons born out of the United Kingdom and domiciled in any place not in the United Kingdom.
- (3.) By reason of place of enlistment :—
 - d. Persons engaged for service in the Royal Malta Artillery, or in any Indian or colonial corps.

For definitions of India and colony see s. 190 (21), (23). It will be recollected that for the purpose of the provisions of the Act relating to the execution of sentences of penal servitude and imprisonment, the Channel Islands and Isle of Man are deemed to be colonies. Section 187 (2).

132. (1.) The governor of every prison in the United Kingdom, and the governor of every prison in India or a colony who is under the same obligation as the governor of a prison in the United Kingdom, shall receive and confine, until discharged or delivered over in due course of law, all prisoners sent to such prison in pursuance of this Act, and every person delivered into his custody as a deserter or absentee without leave by any person conveying him under legal authority, on production of the warrant of a court of summary jurisdiction on which such deserter or absentee without leave has been taken or committed, or of some order from a Secretary of State, or from the Governor-General of India, or the Governor of a colony, which order shall continue in force until the deserter or absentee without leave has arrived at his destination.

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ss.
132-133.
Duty of governor of prison to receive prisoners, deserters, and absentees without leave.

(2.) Every such governor shall also receive into his custody for a period not exceeding seven days, any soldier in military custody upon delivery to him of a written order purporting to be signed by the commanding officer of such soldier.

(3.) The provisions of this section with respect to the governor of a prison in the United Kingdom shall apply to a person having charge of any police station or other place in which prisoners may legally be confined.

Sub-section (1). *Same obligation.* See s. 131.

For definitions of India and colony, see s. 190 (21), (23), and as to the Channel Islands and Isle of Man, s. 187 (2).

Sub-section (2). The object of this is to provide for the safe custody of military prisoners during a halt on the line of march.

Military Prisons.

133. (1.) It shall be lawful for a Secretary of State and in India for the Governor-General, to set apart any building or part of a building under the control of the Secretary of State or Governor-General as a military prison, or as a public prison for the imprisonment of military prisoners, and to declare that any such building

Establishment and regulation of military prisons.

Part IV. or part of a building shall be a military prison, or a public prison, as the case may be, and every military prison so declared shall be deemed to be a public prison within the meaning of the provisions of this Act relating to imprisonment, and if such prison is in India shall be deemed to be an authorised prison.

s. 183.

(2.) It shall be lawful for a Secretary of State, and in India for the Governor-General, from time to time to make, alter, and repeal rules for the government, management, and regulation of military prisons, and for the appointment and removal and powers of inspectors, visitors, governors, and officers thereof, and for the labour of military prisoners therein, and for the safe custody of such prisoners, and for the maintenance of discipline among them, and for the punishment by personal correction, not exceeding twenty-five lashes in the case of corporal punishment, restraint, or otherwise of offences committed by such prisoners, so, however, that such rules shall not authorise corporal punishment to be inflicted for any offence in addition to the offences for which such punishment can be inflicted in pursuance of the Prison Act, 1865, and the Prison Act, 1877, nor render the imprisonment more severe than it is under the law in force for the time being in any public prison in England subject to the Prison Act, 1877, and provided that all the regulations in the Prison Act, 1865, and in the Prison Act, 1877, as to the duties of gaolers, medical officers, and coroners, shall be contained in such rules, so far as the same can be made applicable.

28 & 29 Vict.
c. 126.
40 & 41 Vict.,
c. 21.

(3.) On all occasions of death by violence or attended with suspicious circumstances in any military prison in India an inquest is to be held, to make inquiry into the cause of death. The commanding officer shall cause notice to be given to the nearest magistrate, duly authorised to hold inquests, and such magistrate shall hold an inquest

into the cause of any such death, in the manner and with the powers provided in the case of similar inquiries held under the law for the time being in force in India for regulating criminal procedure.

Part IV.
s. 133.

(4.) Where from any cause there is no competent civil authority available, the commanding officer shall convene a court of inquest. Such court shall be convened and shall hold the inquest in such manner as may be prescribed.

(5.) Such rules may apply to such prisons any enactments of the Prison Act, 1865, imposing punishments on any persons not prisoners.

(6.) All rules made by a Secretary of State in pursuance of this section shall be laid before Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, as soon as practicable after the commencement of the then next session of Parliament.

Sub-section (1). This section enables a Secretary of State to set apart any building as a military prison. This power is in practice exercised by the Secretary of State for War. The section gives a similar power to the Governor-General of India.

The section also gives power to a Secretary of State to set apart any part of a building under his control as a public prison for the imprisonment of military prisoners. This power is in practice exercised by the Home Secretary, and enables him to set apart a portion of any prison under his control for the reception of military prisoners. Any part of a building so set apart as a public prison can be declared by the Secretary of State to be a public prison, and necessarily comes under the rules relating to other public prisons.

As military prisoners sentenced to imprisonment are to undergo their sentences either in military custody or in a public prison (see ss. 63 (1), 64 (1), 65 (1)), this section provides that a building declared to be a military prison shall be a public prison, so as to allow such sentences to be undergone in a military prison. As a penal servitude prisoner while in military custody may be confined in an authorised prison (s. 62 (2)), this section declares a military prison in India to be an authorised prison, so as to allow any such military convict to be confined during his intermediate custody in a military prison.

Part IV. Sub-section (4). *Prescribed.* See Rule 126.

— The orders for the interior management of military prisons, &c.,
 ss. are laid down in the Rules for Military prisons. See Q.R.,
 183-187. Sect. VI, para. 217.

Restrictions on confinement in prisons in India or colonies, not being military prisons. 134. No soldier shall be confined longer than is absolutely necessary in prisons other than military prisons in India, and the Colonies, where the rules for the government and management of such prisons differ from those made by the Governor-General of India and a Secretary of State in the case of India and the colonies respectively.

For definitions of India and colony see s. 190 (21), (23), and *as to* the Channel Islands and Isle of Man see 187 (2).

Classification of prisoners. 185. Whereas it is expedient that a clear difference should be made between the treatment of prisoners convicted of breaches of discipline and the treatment of prisoners convicted of offences of an immoral, dishonest, shameful, or criminal character, or sentenced to be discharged from the service with ignominy, a Secretary of State shall from time to time make rules for the classification and treatment of such prisoners.

See Q.R., Sect. VI, para. 173.

Pay.

Authorised deductions only to be made from pay. 136. The pay of an officer or soldier of Her Majesty's regular forces shall be paid without any deduction other than the deductions authorised by this or any other Act or by any Royal Warrant for the time being.

Penal stoppages from ordinary pay of officers. 137. The following penal deductions may be made from the ordinary pay due to an officer of the regular forces :

- (1.) All ordinary pay due to an officer who absents himself without leave, or overstays the period for which leave of absence has been granted him, unless a satisfactory explanation has been given through the commanding officer of such officer, and has been notified as satisfactory by the Commander-in-Chief to a Secretary of State ;

- (2.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence may be awarded by the court-martial by whom he is convicted of such offence ;
- (3.) The sum required to make good the pay of any officer or soldier which he has unlawfully retained or unlawfully refused to pay.

This section states the penal deductions that may be made from the ordinary pay of an officer, and by implication excludes other penal deductions, but it does not prohibit deductions not penal, as, for instance, in respect of rations. Anything beyond ordinary pay, being in the nature of a gratuity or reward, is left entirely to the disposal of the Royal Warrant.

138. The following penal deductions may be made from the ordinary pay due to a soldier of the regular forces :

Penal stoppages from ordinary pay of soldiers.

- (1.) All ordinary pay for every day of absence either on desertion or without leave, or as prisoner of war, and for every day of imprisonment either under sentence for an offence awarded by a civil court or court-martial, or by his commanding officer, or if he is on board one of Her Majesty's ships by the commanding officer of that ship, or under detention on the charge for an offence of which he is afterwards convicted by a civil court or court-martial, or under detention on the charge for absence without leave, for which he is afterwards awarded imprisonment by his commanding officer ;
- (2.) All ordinary pay for every day on which he is in hospital on account of sickness certified by the proper medical officer attending on him at the hospital to have been caused by an offence under this Act committed by him ;
- (3.) The sum required to make good such compensation for any expenses, loss, damage, or destruction occasioned by the commission of any offence as

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s. 138.

may be awarded by the court-martial by whom he is convicted of such offence, or if he is on board of one of Her Majesty's ships, by the commanding officer of that ship, or where he has confessed the offence and his trial is dispensed with by order under section seventy-three of this Act, as may be awarded by that order or by any other order of a competent military authority under that section ;

- (4.) The sum required to make good such compensation for any expenses caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries, or military decoration, or to any buildings or property, as may be awarded by his commanding officer, or, in case he requires to be tried by court-martial, by that court-martial, or if he is on board one of Her Majesty's ships, by the commanding officer of that ship ;
- (5.) Where a soldier at the time of his enlistment belonged to any part of the auxiliary forces, the sum required to make good any compensation for which at the time of his enlistment he was under stoppage of pay as a member of the auxiliary forces, and any sum which he is liable to pay by reason of his quitting the said part of the auxiliary forces upon his enlistment ;
- (6.) Where a soldier's liquor ration is stopped by his commanding officer on board any ship, whether commissioned by Her Majesty or not, the sum equivalent to such ration, whether previously drawn by the soldier or not, not exceeding one penny a day for twenty-eight days ;
- (7.) The sum required to pay a fine awarded by a court-martial, his commanding officer, or a civil court and

- (8.) The sum required to pay any sum ordered by a **Part IV.**
Secretary of State to be paid as mentioned in this
Act for the maintenance of his wife or child, or
of any bastard child, or towards the cost of any
relief given by way of loan to his wife or child ;

s. 138.

Provided that—

- (a.) The total amount of deductions from the ordinary
pay due to a soldier in respect of the sums re-
quired to pay any compensation, fine, or sum
awarded or ordered to be paid as aforesaid by a
court-martial, commanding officer, or Secretary
of State, shall not exceed such sum as will leave
to the soldier, after paying for his messing and
washing, less than one penny a day ; and
- (b.) a person shall not be subjected in respect of any
compensation, fine, or sum awarded or ordered to
be paid as aforesaid, to any deductions greater
than is sufficient to make good the expenses, loss,
damage, or destruction for which such compen-
sation is awarded, or to pay the said sum.

The note to s. 137 applies to this section.

Sub-section (1). The Royal (Pay, &c.) Warrant, provides that where the absence has not exceeded five days, the commanding officer has a discretion to enforce or not wholly or partially the deduction of the ordinary pay for absence, unless the soldier is convicted by a court-martial, in which case the deduction is absolute. Where the absence exceeds five days, and in any other case mentioned in this sub-section, the deduction of pay is absolute, without any award by the commanding officer or otherwise. The commanding officer for the purpose of this section is the commanding officer as defined by Rule 128. See Q.R., Sect. VI, para. 15.

Under s. 140 (2) and the Royal Warrant, absence for less than six hours cannot reckon as a day of absence, unless two conditions are fulfilled, first, that it prevented the absentee from fulfilling a military duty, and second, that the duty was thrown upon some other person. The six hours should be reckoned consecutively, but it is immaterial whether they are partly in one day and partly in another. Thus, a soldier is liable to deprivation of one day's pay for any period of six hours' continuous absence without leave, and

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Part IV. where the absence extends over twelve hours he is liable to deprivation of one day's pay in respect of any day reckoned from midnight to midnight during any portion of which he was absent. He is also liable to lose a day's pay for any day in which, by reason of his absence, however short, a duty that ought to be performed by him is thrown upon some other person.

s. 138.

For example, if a soldier is absent from 9 P.M. on Monday until 4 A.M. on Tuesday, his absence counts as a day's absence, but no more, although the absence was partly on one day and partly on another. If, however, he had returned at 1 A.M., his absence could not count as a day's absence, unless meanwhile he was bound to go on guard or perform some other military duty, and in consequence of his absence some other soldier had to go on guard or perform that duty.

If a soldier is absent from 6 P.M. on Monday until 6.5 A.M. on Tuesday, his absence may be reckoned as two days' absence, and it may also be so reckoned if he returns at 4 A.M. on Tuesday, and at 2 A.M. some other soldier had to go on guard instead of him.

If a soldier is absent from 6 P.M. on Monday to any hour on Friday, the commanding officer has a discretion as to enforcing the deduction of pay, because the absence has not exceeded five days, but if he returned at 2 A.M. on Saturday the commanding officer has no discretion, because the absence has exceeded five days, as the six hours on Monday reckon as one day, and the absence on Saturday, though less than six hours, still makes the absence exceed five days.

The competent military authority, under s. 73 (1), can order that the soldier shall forfeit his pay for every day of imprisonment under detention on a charge of desertion or fraudulent enlistment when he confesses his guilt and his trial is dispensed with. Under s. 140 (2), the imprisonment cannot count as a day of imprisonment unless it has lasted at least six hours.

Sub-section (2). This deduction is only authorised where the sickness is caused by an offence of which he has been found guilty, and therefore does not extend to sickness caused by immorality or intemperance, when there is no conviction. When the soldier is charged with the offence, the medical officer must give evidence, and his certificate is not sufficient. See Q.R., Sect. VI, para. 54.

Sub-section (3). As to the statement of the ground for compensation in the charge, see Rule 11 (F), and Appendix I, Note as to the use of Forms of Charges (23).

Under sub-sections (3) and (4) a soldier is not liable for the ordinary expenses of his prosecution, capture, or conveyance, or

indirect losses of a similar kind. Nor would a prisoner be liable under them for damage to a military policeman's clothes, because the policeman fell down and damaged them while in pursuit of the prisoner when endeavouring to escape. But where a prisoner refused to march, being able to do so, and a cab had to be hired for his conveyance, he was held liable for the expense thus incurred by his contumacy.

Dispensed with by order. As this is limited to an order under s. 73, a commanding officer who of his own authority abstains from sending an accused soldier for trial must dismiss the charge (see s. 46, Rule 4 (A) and note), and therefore cannot in the technical sense exercise any power under this sub-section of ordering any deduction from the soldier's pay.

Sub-section (4). *Buildings or property.* These words are not confined to public buildings, and consequently a soldier may be ordered to pay damages for broken windows or other slight damage done by him. A serious case of this sort is necessarily a case which should not be disposed of by a commanding officer.

Where a soldier has been convicted by court-martial for an offence, his commanding officer cannot subsequently award compensation for damage done by that offence.

Requires to be tried by court-martial. See s. 46 (8).

Sub-section (7). This sub-section will enable an officer to pay a fine imposed on a soldier by a civil court, and deduct it from his pay, and thus prevent the soldier from being imprisoned for non-payment of the fine. A court-martial or a commanding officer can only award a fine for drunkenness.

Sub-section (8). See s. 145, under which the Secretary of State can order this deduction, either of his own motion or in accordance with the order of the court.

Proviso (a). If a soldier is subjected to a deduction in respect of one matter up to the full amount allowed by this proviso, any deduction subsequently imposed cannot begin to be enforced till the whole sum in respect of which the first deduction was imposed is satisfied. If a soldier under deductions not up to the full amount allowed by this proviso is subjected to a further deduction or deductions, which taken altogether would exceed that amount, the latter deductions must abate in order of priority, so that in no case may the soldier have less than the penny a day.

Proviso (b). The court will necessarily take care to find as accurately as possible the amount for which deductions are to be made from a soldier's pay, but as in some cases they will be unable to ascertain the amount accurately, and in others may be mistaken, care will have to be taken in enforcing their sentence not to contravene this proviso. The sentence of the court will not justify any deduction which exceeds the actual loss.

Part IV.

s. 138.

Part IV. If a soldier is sentenced to stoppages for losing by neglect articles of his clothing or equipments, and these articles are afterwards found and in serviceable condition, he has "made good" the loss.

139. 140. Where two prisoners were convicted of having jointly injured public property, each was held to be rightly sentenced to make good the whole amount of the injury sustained; and in the event of one prisoner dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied upon the other. Where, however, both remained amenable, the stoppages would be properly divided between them in equal proportions.

The principle is, that stoppages are intended, not for punishment, but to compensate for loss sustained.

How deduction of pay may be remitted. **139.** Any deduction of pay authorised by this Act may be remitted in such manner and by such authority as may be from time to time provided by Royal Warrant, and subject to the provisions of any such warrant may be remitted by the Secretary of State.

Supplemental as to deductions from ordinary pay. **140. (1.)** Any sum authorised by this Act to be deducted from the ordinary pay of an officer or soldier may, without prejudice to any other mode of recovering the same, be deducted from the ordinary pay or from any sums due to such officer or soldier in such manner, and when deducted or recovered may be appropriated in such manner, as may be from time to time directed by any regulation or order of the Secretary of State.

(2.) And any such regulation or order may from time to time declare what shall be deemed for the purposes of the provisions of this Act relating to deductions from pay to constitute a day of absence or a day of imprisonment, so, however, that no time shall be so reckoned as a day unless the absence or imprisonment has lasted for six hours or upwards, whether wholly in one day or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person.

(3.) In cases of doubt as to the proper issue of pay or the proper deduction from pay due to any officer or

soldier, the pay may be withheld until Her Majesty's order respecting it has been signified through a Secretary of State, which order shall be final.

Part IV.
ss.
140-142.

Sub-section (1). *Sums due.* This will allow the amount to be deducted from prize-money or other sums earned but not paid to an officer or soldier. It would include good conduct pay or deferred pay, but not money lodged in the regimental savings' bank.

Sub-section (2). *Day of absence.* See Royal (Pay, &c.) Warrant, and note to s. 138 (1).

141. Every assignment of, and every charge on, and every agreement to assign or charge any deferred pay, or military reward payable to any officer or soldier of any of Her Majesty's forces, or any pension, allowance, or relief payable to any such officer or soldier, or his widow, child, or other relative, or to any person in respect of any military service, shall, except so far as the same is made in pursuance of a Royal Warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act for the time being in force, be void.

Prohibition
of assign-
ment of
military
pay, pen-
sions, &c.

The assignment of pay by an officer or soldier is void by law, independently of this enactment. A pension or retiring allowance, on the other hand, would but for this enactment be assignable. See *Lucas v. Harris*, 18 Q.B.D., 127; *Crowe v. Price*, 22 Q.B.D., 429.

Authorised by any Act. This refers to 2 & 3 Vict., c.51, authorising the assignment, in certain cases, of a pension to guardians of the poor giving relief to the pensioner or his family.

142. (1.) Where any regulations made by the Secretary of State or the Commissioners of Her Majesty's Treasury, with respect to the payment of any military reward, pension, or allowance, or any sum payable in respect of military service, or with respect to the payment of money or delivery of property in the possession of the military authorities, provide for proving, whether on oath or by statutory declaration, the identity of the recipient or any other matter in connection with such payment, such oath may be administered and declaration taken by the persons

Punish-
ment of
false oath
and per-
sonation.

Part IV. specified in the regulations, and any person who in such
s. 142. oath or declaration wilfully makes any false statement shall be liable to the punishment of perjury.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to belong to or to be a particular man in the regular, reserve, or auxiliary forces shall be deemed to be guilty of personation.

37 & 38 Vict.
 c. 33.

(3.) Any person who is guilty of an offence under the False Personation Act, 1874, in relation to any military pay, reward, pension, or allowance, or to any sum payable in respect of military service, or to any money or property in the possession of the military authorities, or is guilty of personation under this section, shall be liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding twenty-five pounds.

(4.) Provided that nothing in this section shall prevent any person from being proceeded against and punished under any other enactment or at common law in respect of any offence, so that he be not punished twice for the same offence.

If a man personates another with intent to obtain any money or property he is guilty of an offence under the False Personation Act, 1874, and, if convicted at the assizes, is liable to penal servitude for life. In a very serious case a man might be indicted under that Act; in trivial cases it will be better to prosecute under the present section.

Under this section a man who falsely represents himself to any authority to belong to part of Her Majesty's forces, or to be a particular man in any of Her Majesty's forces, may be punished, although he does not do it with intent to obtain any money. But it will not be desirable to institute a prosecution in such cases, unless the man has, in fact, obtained some advantage, or has put the authorities to expense and inconvenience. Care must be taken not to prosecute a man for what may be mere idle talk or bravado, without any guilty intention.

In this, as in every other case of an offence punishable by a court of summary jurisdiction, a person who aids and abets the offence is, in England, equally punishable with the principal offender. Consequently, if A personates B, a reserve man, and

thereby obtains B's pay, and hands the pay over to B or B's wife, B or B's wife is punishable as aiding and abetting the offence of personation by A. Part IV.
ss.
142-143.

An army reserve man who commits any offence under subsections (2) or (3) in the presence of an officer may, at the discretion of the officer, be ordered into either military or civil custody; and in the latter case will be tried before a court of summary jurisdiction. Reserve Forces Act, s. 6 (3).

Exemptions of Officers and Soldiers.

143. (1.) All officers and soldiers of Her Majesty's regular forces on duty or on the march ; and Exemptions
of officers
and soldiers
from tolls.

Their horses and baggage ; and

All prisoners under military escort ; and

All carriages and horses belonging to Her Majesty or employed in her military service, when conveying any such persons as above in this section mentioned, or baggage or stores, or returning from conveying the same,

shall be exempted from payment of any duties or tolls on embarking or disembarking from or upon any pier, wharf, quay, or landing-place, or in passing along or over any turnpike or other road or bridge otherwise demandable by virtue of any Act of Parliament already passed or hereafter to be passed, or by virtue of any Act, Ordinance, Order, or direction of the legislature or other authority in India or any colony.

Provided that nothing in this section shall exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal from payment of tolls in like manner as other boats, barges, and vessels.

(2.) When any soldiers have occasion in their march by route to pass regular ferries in Scotland, the officer commanding may, at his option, pass over with his soldiers as passengers and shall pay for himself and each soldier one-half only of the ordinary rate payable by single

Part IV. persons, or may hire the ferry boat for himself and his party, debarring others for that time, and shall in all
 ss.
 143 144. such cases pay only half the ordinary rate for such boat.

(3.) Any person who demands and receives any duty, toll, or rate in contravention of this section shall, on summary conviction, be liable to a fine not exceeding five pounds nor less than ten shillings.

Sub-section (1). *Regular forces.* This expression includes the Marines and Her Majesty's Indian forces, also the reserve forces when subject to military law.

The exemption is not a personal one, but is confined to officers and soldiers when on duty or on the march; thus an officer driving from his private house to barracks would not be entitled to the exemption.

For definition of India and colony, see s. 190 (21), (23).

Sub-section (3). *On summary conviction*, see ss. 166-169.

Exemptions
of soldiers
in respect
of civil
process.

144. (1.) A soldier of Her Majesty's regular forces shall not be liable to be taken out of Her Majesty's service by any process, execution, or order of any court of law or otherwise, or to be compelled to appear in person before any court of law, except in respect of the following matters, or one of them; that is to say,

(a.) On account of a charge of, or conviction for crime; or

(b.) On account of any debt, damages, or sum of money, when the amount exceeds thirty pounds over and above all costs of suit.

(2.) For the purposes of this section a crime shall mean a felony, misdemeanour, or other crime or offence punishable, according to the law in force in that part of Her Majesty's dominions in which such soldier is, with fine or imprisonment or some greater punishment, and shall not include the offence of a person absenting himself from his service, or neglecting to fulfil his contract, or otherwise misconducting himself respecting his contract.

(3.) For the purposes of this section a court of law shall be deemed to include a court of summary jurisdiction and any magistrate. Part IV.
s. 144.

(4.) The amount of the debt, damages, or sum shall be proved for the purpose of any process issued before the court has adjudicated on the case by an affidavit of the person seeking to recover the same or of some one on his behalf, and such affidavit shall be sworn, without payment of any fee, in the manner in which affidavits are sworn in the court in which proceedings are taken for the recovery of the sum, and a memorandum of such affidavit shall, without fee, be indorsed upon any process or order issued against a soldier.

(5.) All proceedings and documents in or incidental to a process, execution, or order in contravention of this section shall be void ; and where complaint is made by a soldier or his commanding officer that such soldier is dealt with in contravention of this section by any process, execution, or order issued out of any court, and is made to that court or to any court superior to it, the court, or some judge thereof, shall examine into the complaint, and shall, if necessary, discharge such soldier without fee, and may award reasonable costs to the complainant, which may be recovered as if costs had been awarded in his favour in any action or other proceeding in such court.

Provided that—

- (1.) Any person having cause of action or suit against a soldier of the regular forces may, notwithstanding anything in this section, after due notice in writing given to the soldier, or left at his last quarters, proceed in such action or suit to judgment, and have execution other than against the person, pay, arms, ammunition, equipments, instruments, regimental necessities, or clothing of such soldier ; and
- (2.) This section shall not prevent such proceeding with

Part IV. respect to apprentices and indentured labourers
 as is authorised by this Act.

ss.

144-145.

The history of this section is given in Clode, Mil. Forc., i. 208. It exempts a soldier from appearing in person, though not from being sued for a debt under £30.

As to apprentices and indentured labourers, see ss. 96, 97, and sch. I.

Liability of
 soldier to
 maintain
 wife and
 children.

145. (1.) A soldier of the regular forces shall be liable to contribute to the maintenance of his wife and of his children, and also to the maintenance of any bastard child of which he may be proved to be the father, to the same extent as if he were not a soldier; but execution in respect of any such liability or of any order or decree in respect of such maintenance shall not issue against his person, pay, arms, ammunition, equipments, instruments, regimental necessaries, or clothing, nor shall he be liable to be punished for the offence of deserting or neglecting to maintain his wife or family, or any member thereof, or of leaving her or them chargeable to any union, parish, or place.

(2.) When any order or decree is made under any Act or at common law for payment by a man who is or subsequently becomes a soldier of the regular forces either of the cost of the maintenance of his wife or child, or of any bastard child of whom he is the putative father, or of the cost of any relief given to his wife or child by way of loan, a copy of such order or decree shall be sent to a Secretary of State, and in the case—

(a.) Of such order or decree being so sent; or

(b.) Of it appearing to the satisfaction of a Secretary of State that a soldier of the regular forces has deserted or left in destitute circumstances, without reasonable cause, his wife or any of his legitimate children under fourteen years of age,

the Secretary of State shall order a portion not exceeding sixpence of the daily pay of a non-commissioned officer

who is not below the rank of serjeant, and not exceeding Part IV.
 threepence of the daily pay of any other soldier, to be ss.
 deducted from such daily pay, and to be appropriated, in 145-146.
 the first case, in liquidation of the sum adjudged to be
 paid by such order or decree, and, in the second case,
 towards the maintenance of such wife or children, in such
 manner as the Secretary of State thinks fit.

(3.) Where a proceeding is instituted against a soldier of the regular forces under any Act, or at common law, for the purpose of enforcing against him any such liability as above in this section mentioned, and such soldier is quartered out of the jurisdiction of the court, or, if the proceeding is before a court of summary jurisdiction, out of the petty sessional division in which the proceeding is instituted, the process shall be served on the commanding officer of such soldier, and such service shall not be valid unless there be left therewith, in the hands of the commanding officer, a sum of money (to be adjudged as costs incurred in obtaining the order or decree, if made against the soldier) sufficient to enable him to attend the hearing of the case and return to his quarters, and such sum may be expended by the commanding officer for that purpose; and no process whatever under any Act or at common law in any proceeding in this section mentioned shall be valid against a soldier of the regular forces if served after such soldier is under orders for service beyond the seas.

The Queen's Regulations, Sect. XIX, provide for handing over to the parish authority in certain cases a married soldier who on attestation falsely represented himself to be single.

Sub-section (3). *Court of summary jurisdiction.* See definition in s. 190 (35).

146. An officer of the regular forces on the active list within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces shall not be capable of being nominated or elected to be sheriff of Officers not to be sheriffs or mayors.

Part IV. any county, borough, or other place, or to be mayor or
 ss. alderman of, or to hold any office in, any municipal
 146-151. corporation in any city, borough, or place in the United
 Kingdom.

Provided that nothing in this section shall disqualify
 any officer for being elected to or being a member of a
 county council.

It is generally understood that officers on full pay and soldiers
 are exempt from serving all offices which require the personal
 discharge of duty, and do not admit of the appointment of a
 deputy. See Chapter XII, para. 8.

Exemption
 from jury.

147. Every soldier in Her Majesty's regular forces shall
 be exempt from serving on any jury.

See Chapter XII, para. 8.

Court of Requests in India.

* * * * *

Sections 148, 149, and 150, relating to this subject, are repealed
 by s. 6 of the Army (Annual) Act, 1888.

Courts of
 small causes
 and civil
 courts in
 India.

151. (1.) In India all actions of debt and personal
 actions against persons subject to military law, other than
 soldiers of the regular forces, where the persons so subject
 are resident within the local jurisdiction of any court of
 small causes, shall be cognisable by such court to the
 extent of its powers.

* * * * *

Sub-section (2) is repealed by s. 6 of the Army (Annual) Act,
 1890.

(3.) A civil court or court of small causes, upon ad-
 judging payment of any sum by any person subject to
 military law other than a soldier of the regular forces,
 may either award execution thereof generally, or may
 direct specially that the amount named in the direction,
 being the whole or any part of the said sum, shall be
 paid by instalments or otherwise out of any pay or other
 public money payable to the debtor, and the amount
 named in the direction, not exceeding one-half of such pay

and public money, shall, while the debtor is in India, be **Part IV.**
stopped and paid in conformity with the direction. **ss.**

(4.) In regard to award of execution generally, a civil **151-154.**
court or court of small causes shall proceed in accordance
with the rules of procedure of such court in India.

A civil court or court of small causes can either stop the pay of
a debtor or award execution; and in awarding and enforcing
execution will be guided by its ordinary rules.

Legal Penalties in Matters respecting Forces.

152. Any person who falsely represents himself to any **Punish-**
military, naval, or civil authority to be a deserter from **ment for**
Her Majesty's regular forces, shall on summary conviction **pretending**
to be a
deserter,
be sentenced to be imprisoned, with or without hard
labour, for any period not exceeding three months.

Her Majesty's regular forces. See definition in s. 190 (8).

On summary conviction. See ss. 166-168.

153. Any person who in the United Kingdom or else- **Punish-**
where by any means whatsoever— **ment for**

(1.) Procures or persuades any soldier to desert, or **inducing**
attempts to procure or persuade any soldier to **soldiers to**
desert; or **desert.**

(2.) Knowing that a soldier is about to desert, aids or
assists him in deserting; or

(3.) Knowing any soldier to be a deserter, conceals such
soldier; or aids or assists him in concealing
himself, or aids or assists in his rescue,

shall be liable on summary conviction to be imprisoned,
with or without hard labour, for a term not exceeding six
months.

On summary conviction. See ss. 166-168.

154. With respect to deserters the following provisions **Apprehen-**
shall have effect : **sion of**
deserters.

- Part IV. **s. 154.** (1.) Upon reasonable suspicion that a person is a deserter, it shall be lawful for any constable, or if no constable can be immediately met with, then for any officer or soldier or other person, to apprehend such suspected person, and forthwith to bring him before a court of summary jurisdiction :
- (2.) A justice of the peace, magistrate, or other person having authority to issue a warrant for the apprehension of a person charged with crime may, if satisfied by evidence on oath that a deserter is or is reasonably suspected to be within his jurisdiction, issue a warrant authorising such deserter to be apprehended and brought forthwith before a court of summary jurisdiction :
- (3.) Where a person is brought before a court of summary jurisdiction charged with being a deserter under this Act, such court may deal with the case in like manner as if such person were brought before the court charged with an indictable offence, or in Scotland an offence :
- (4.) The court, if satisfied either by evidence on oath or by the confession of such person that he is a deserter shall forthwith, as it may seem to the court most expedient with regard to his safe custody, cause him either to be delivered into military custody, in such manner as the court may deem most expedient, or, until he can be so delivered, to be committed to some prison, police station, or other place legally provided for the confinement of persons in custody, for such reasonable time as appears to the court reasonably necessary for the purpose of delivering him into military custody :
- (5.) Where the person confessed himself to be a deserter, and evidence of the truth or falsehood of such

confession is not then forthcoming, the court shall remand such person for the purpose of obtaining information as to the truth or falsehood of the said confession, and for that purpose, the court shall transmit, if sitting in the United Kingdom, to a Secretary of State, and if in India to the general or other officer commanding the forces in the military district or station where the court sits, and if in a colony to the general or other officer commanding the forces in that colony, a return (in this Act referred to as a descriptive return) containing such particulars and being in such form as is specified in the Fourth Schedule to this Act, or as may be from time to time directed by a Secretary of State :

Part IV;
s. 154.

- (6.) The court may from time to time remand the said person for a period not exceeding eight days in each instance, and not exceeding in the whole such period as appears to the court reasonably necessary for the purpose of obtaining the said information :
- (7.) Where the court causes a person either to be delivered into military custody or to be committed as a deserter, the court shall send, if in the United Kingdom, to a Secretary of State, and if in India or a colony to the general or other officer commanding as aforesaid, a descriptive return in relation to such deserter, for which the clerk of the court shall be entitled to a fee of two shillings :
- (8.) A Secretary of State shall direct payment of the said fee.

This section provides for the apprehension of suspected deserters by the civil power and for the delivery of deserters into military custody. It will be observed that a court of summary jurisdiction—that is the justices or police magistrate, or in Scot-

(M.L.)

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Part IV. land the sheriff, s. 190 (35)—must be satisfied by evidence on oath or by the confession of the person apprehended, that he is a deserter, before delivering him to the military authorities.

154-156.

There is no obligation on the military authority to take over a man committed as a deserter, and in certain circumstances it is their duty not to do so. See Q.R., Sect. VI, paras. 135-139.

For definition of India and colony, see s. 190 (21), (23).

Penalty on trafficking in commissions, 34 & 35 Vict. c. 86.

155. Every person (except the Army Purchase Commissioners, and persons acting under their authority by virtue of the Regulation of the Forces Act, 1871) who negotiates, acts as agent for, or otherwise aids or connives at—

- (1.) The sale or purchase of any commission in Her Majesty's regular forces ; or
- (2.) The giving or receiving of any valuable consideration in respect of any promotion in or retirement from such forces, or any employment therein ; or
- (3.) Any exchange which is made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which any sum of money or other consideration is given or received,

33 & 39 Vict., c. 16.

shall be liable on conviction on indictment or information to a fine of one hundred pounds, or to imprisonment for any period not exceeding six months, and if an officer, on conviction by court-martial, to be dismissed the service.

Penalty on purchasing from soldiers regimental necessities, equipments, stores, &c.

156. (1.) Every person who—

- (a.) Buys, exchanges, takes in pawn, detains, or receives from a soldier, or any person acting on his behalf, on any pretence whatsoever ; or
- (b.) Solicits or entices any soldier to sell, exchange, pawn, or give away ; or
- (c.) Assists or acts for a soldier in selling, exchanging, pawning, or making away with,

any of the property following ; namely, any arms, ammuni-

tion, equipments, instruments, regimental necessaries, or clothing, or any military decorations of an officer or soldier, or any furniture, bedding, blankets, sheets, utensils, and stores in regimental charge, or any provisions or forage issued for the use of an officer or soldier, or his horse, or of any horse employed in Her Majesty's service, shall, unless he proves either that he acted in ignorance of the same being such property as aforesaid, or of the person with whom he dealt being or acting for a soldier, or that the same was sold by order of a Secretary of State or some competent military authority, be liable on summary conviction, in the case of the first offence, to a fine not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence; and in the case of a second offence, to a fine not less than five pounds and not exceeding twenty pounds, together with treble the value of any property of which such offender has become possessed by means of his offence, or to imprisonment, with or without hard labour, for a term not exceeding six months.

(2.) Where any such property as above in this section mentioned is found in the possession or keeping of any person, such person may be taken or summoned before a court of summary jurisdiction, and if such court have reasonable ground to believe that the property so found was stolen, or was bought, exchanged, taken in pawn obtained or received in contravention of this section, then if such person does not satisfy the court that he came by the property so found lawfully and without any contravention of this Act, he shall be liable on summary conviction to a penalty not exceeding five pounds.

(3.) A person charged with an offence against this section, and the wife or husband of such person, may, if he or she think fit, be sworn and examined as an ordinary witness in the case.

Part IV. (4.) A person found committing an offence against this section may be apprehended without warrant, and taken together with the property which is the subject of the offence, before a court of summary jurisdiction ; and any person to whom any such property as above mentioned is offered to be sold, pawned, or delivered, who has reasonable cause to suppose that the same is offered in contravention of this section, may, and if he has the power shall, apprehend the person offering such property, and forthwith take him, together with such property, before a court of summary jurisdiction.

s. 156.

(5.) A court of summary jurisdiction, if satisfied on oath that there is reasonable cause to suspect that any person has in his possession, or on his premises, any property on or with respect to which any offence in this section mentioned has been committed, may grant a warrant to search for such property, as in the case of stolen goods : and any property found on such search shall be seized by the officer charged with the execution of such warrant, who shall bring the person in whose possession the same is found before some court of summary jurisdiction, to be dealt with according to law.

(6.) For the purposes of this section property shall be deemed to be in the possession or keeping of a person if he knowingly has it in the actual possession or keeping of any other person, or in any house, building, lodging, apartment, field, or place, open or enclosed, whether occupied by himself or not, and whether the same is so had for his own use or benefit, or for the use or benefit of another.

33 & 39 Vict.
c. 25.

(7.) Articles which are public stores within the meaning of the Public Stores Act, 1875, and are not included in the foregoing description, shall not be deemed to be stores issued as regimental necessities or otherwise within the meaning of section thirteen of that Act.

(8.) It shall be lawful for the Governor-General of

India or for the legislature of any colony, on the recommendation of the Governor thereof, but not otherwise, by any law or ordinance to reduce a minimum fine under this section to such amount as may to such Governor-General or legislature appear to be better adapted to the pecuniary means of the inhabitants.

Part IV.

as.

156-157.

(9.) Every person who receives, detains, or has in his possession the identity certificate or life certificate of a person entitled to a military pension or to reserve pay as a pledge or security for a debt, or with a view to obtain payment from the pensioner or person entitled to the pay of a debt due either to himself or to any other person, shall be liable on summary conviction to the like penalty as for an offence under sub-section one of this section, and the certificate shall be deemed to be property within the meaning of this section.

This section applies to natives of India and to the arms, &c., of Indian soldiers.

Sub-section (3). It will be observed that this sub-section permits a person charged with an offence as well as his or her wife or husband to be examined as a witness in the case.

For definition of India, colony, court of summary jurisdiction, and horse, see s. 190 (21), (23), (35), (40).

Jurisdiction.

157. Where a person subject to military law has been acquitted or convicted of an offence by a court-martial, he shall not be liable to be tried again by a court-martial in respect of that offence.

Person not
to be tried
twice.

Where a court is illegally constituted—as, for example, if convened by an officer not authorised to convene it, or if composed of too few members—it is no court at all, and therefore the prisoner will not really have been tried, and may be tried again.

So also, a finding of conviction if not confirmed is of no validity (s. 54 (6)), and the prisoner therefore in such a case has not been convicted, and can be tried again. See Chapter V, para. 5.

The principle of law is that a man shall not be tried twice in respect of the same offence. It has been laid down that the test

Par. IV. question is—Would the evidence produced on the second trial have sufficed to support a conviction on the first. If so, the second trial is illegal and void.

**ss.
157-158.**

Where on the second trial the charge is for a different offence or the particulars refer to a different set of facts, the second trial is valid, but an offence of which under s. 56 the man could have been convicted on the first trial is not a different offence.

Liability to
military
law in
respect of
status.

158. (1.) Where an offence under this Act has been committed by any person while subject to military law, such person may be taken into and kept in military custody, and tried and punished for such offence, although he, or the corps or battalion to which he belongs, has ceased to be subject to military law, in like manner as he might have been taken into and kept in military custody, tried or punished, if he or such corps or battalion had continued so subject :

Provided that where a person has since the commission of an offence ceased to be subject to military law, he shall not be tried for such offence, except in the case of the offence of mutiny, desertion, or fraudulent enlistment unless his trial commences within three months after he has ceased to be subject to military law ; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court as well as by court-martial.

(2.) Where a person subject to military law is sentenced by court-martial to penal servitude or imprisonment, this Act shall apply to him during the term of his sentence notwithstanding that he is discharged or dismissed from Her Majesty's service, or has otherwise ceased to be subject to military law, and he may be kept, removed, imprisoned, and punished accordingly as if he continued to be subject to military law.

This section arises out of the difference between the status of a soldier and the status of a civilian. A soldier, using the term in its larger sense, repeatedly changes his status from soldier to civilian and from civilian to soldier. In the regular forces this change takes place when a soldier is transferred to the reserve,

when he comes back from the reserve to the army on being called out for permanent service or for training, and again when he returns to civil life on being released from service or at the end of his training. A militiaman, as a general rule, is for a short time only in every year under military law, and returns again to his civil status in the same year. The volunteers, again, are constantly changing their status, as they are subject to military law when they are acting with the regular forces, and are not subject to that law under other circumstances, except when on actual service.

This section then provides that if a person while subject to military law commits a military offence, he may be punished for that offence, though he may have changed his status before he is tried, but he can be tried only within three months after the military status ceases. An exception is made with respect to mutiny, desertion, and fraudulent enlistment, as these offences may be tried at any time after they have been committed, subject to the restrictions in s. 161. Further exemptions are made by the Reserve Forces Act, 1882, s. 26 (2), and the Militia Act, 1882, s. 43 (2).

The section further enacts that a sentence for a military offence shall not be affected by the offender being discharged or dismissed, or otherwise ceasing to be subject to military law.

It has been ruled by the Judge Advocate-General that a militiaman sentenced by his commanding officer to imprisonment during his period of training, can be kept in prison for the whole term of his sentence, although the period of training expires before the expiration of the sentence.

159. Any person subject to military law who within or without Her Majesty's dominions commits any offence for which he is liable to be tried by court-martial, may be tried and punished for such offence at any place (either within or without Her Majesty's dominions) which is within the jurisdiction of an officer authorised to convene general courts-martial, and in which the offender may for the time being be, in the same manner as if the offence had been committed where the trial by court-martial takes place, and the offender were under the command of the officer convening such court-martial.

This section provides that an offender may be tried by court-martial anywhere, so long as he is tried within the jurisdiction of an officer authorised to convene general courts-martial.

Part IV.

ss.

158-159.

Liability to military law in respect of place of commission of offence

Part IV. 160. No person shall be subject to any punishment or penalties under the provisions of this Act other than those which could have been inflicted if he had been tried in the place where the offence was committed.

ss.
Punish-
ment not
increased
by trial
elsewhere
than offence
committed.

This enactment seems useless, as any difference in punishment under the Act is not dependent on the place of trial.

Liability to
military
law in
respect of
time for
trial of
offences.

161. A person shall not in pursuance of this Act be tried or punished for any offence triable by court-martial committed more than three years before the date at which his trial begins, except in the case of the offence of mutiny, desertion, or fraudulent enlistment; but this section shall not affect the jurisdiction of a civil court in the case of any offence triable by such court, as well as by court-martial; and where a soldier has served continuously in an exemplary manner for not less than three years in any corps of Her Majesty's regular forces, he shall not be tried for any such offence of desertion (other than desertion on active service), or of fraudulent enlistment, as was committed before the commencement of such three years, but where such offence was fraudulent enlistment, all service prior to such enlistment shall be forfeited.

The effect of this section is that on the expiration of three years from the commission of an offence, the offender is free from being tried or punished under this Act by court-martial, for any offence, except mutiny, desertion, or fraudulent enlistment. Mutiny may be tried at any time. With regard to desertion and fraudulent enlistment, it is provided that except in the case of one of the greatest of all military crimes—desertion on active service—he is not to be tried for the offence if he has served continuously in an exemplary manner for three years in a corps of the regular forces. In the case of fraudulent enlistment, inasmuch as he has chosen to quit his old corps and enter into a new contract to serve for a further term of years, he will be held to serve according to that contract and will not reckon any of his prior service.

In an exemplary manner. This means that the man has had no entry in the regimental defaulter sheet for a continuous period of three years, Q.R., Sect. VI, para. 41.

162. (1.) If a person sentenced by a court-martial in Part IV. pursuance of this Act to punishment for an offence is afterwards tried by a civil court for the same offence that court shall, in awarding punishment, have regard to the military punishment he may already have undergone.

s. 162.
Adjustment
of civil and
military
law.

(2.) Save as aforesaid, nothing in this Act shall exempt an officer or soldier from being proceeded against by the ordinary course of law, when accused or convicted of any offence, except such an offence as is declared not to be a crime for the purpose of the provisions of this Act relating to taking a soldier out of Her Majesty's service.

(3.) If an officer—

(a.) Neglects or refuses on application to deliver over to the civil magistrate any officer or soldier under his command who is so accused or convicted as aforesaid; or

(b.) Wilfully obstructs or neglects or refuses to assist constables or other ministers of justice in apprehending any such officer or soldier,

such commanding officer shall, on conviction in any of Her Majesty's superior courts in the United Kingdom, or in a supreme court in India, be guilty of a misdemeanor.

(4.) A certificate of a conviction of an officer under this section, with the judgment of the court thereon, in such form as may be directed by a Secretary of State, shall be transmitted to such Secretary of State.

(5.) Any offence committed by any such commanding officer out of the United Kingdom shall, for the purpose of the apprehension, trial, and punishment of the offender, be deemed to have been committed within the jurisdiction of Her Majesty's High Court of Justice in England; and such court shall have jurisdiction as if the place where the offence was committed or the offender may for the time being be were in England.

(6.) Where a person subject to military law has been acquitted or convicted of an offence by a competent civil

Part IV. court, he shall not be liable to be tried in respect of that offence under this Act.

ss.

162-163. This section, in effect, declares that a person subject to military law is not to be exempted from the civil law by reason of his military status, so that a person acquitted or convicted of an offence by a court-martial may still be tried by a civil court for the same offence, as being an offence against the civil law. Sub-section (1), however, provides in favour of the soldier, that a civil court in awarding punishment for an offence, shall have regard to any sentence which has been passed by a military court; while sub-section (6) further declares that where a person subject to military law has been acquitted or convicted of an offence by a competent civil court, he shall not be tried under military law for that offence.

As to sub-section (2), see s. 144.

Sub-section (5). It will be observed that an offence, though committed out of the United Kingdom, can be tried and punished in England. See also s. 170 (3).

Sub-section (6). If a non-commissioned officer is convicted by a civil court, the case is to be reported to the general officer commanding so that he may consider whether it is desirable to recommend the reduction of the offender, Q.R., Sect. VI, para. 56.

Evidence.

Regulations
as to
evidence.

163. (1.) The following enactments shall be made with respect to evidence in proceedings under this Act, whether before a civil court or a court-martial; that is to say,

(a.) The attestation paper purporting to be signed by a person on his being attested as a soldier, or the declaration purporting to be made by any person upon his re-engagement in any of Her Majesty's regular forces, or upon any enrolment in any branch of Her Majesty's service, shall be evidence of such person having given the answers to questions which he is therein represented as having given:

The enlistment of a person in Her Majesty's service may be proved by the production of a copy of his attestation paper purporting to be certified to be a true copy by the officer having

the custody of the attestation paper without proof of the handwriting of such officer, or of his having the custody of the paper : Part IV
s. 163.

- (b.) A letter, return, or other document respecting the service of any person in or the discharge of any person from any portion of Her Majesty's forces or respecting a person not having served in or belonged to any portion of Her Majesty's forces, if purporting to be signed by or on behalf of a Secretary of State, or of the Commissioners of the Admiralty, or by the commanding officer of any portion of Her Majesty's forces, or of any of Her Majesty's ships, to which such person appears to have belonged, or alleges that he belongs or had belonged, shall be evidence of the facts stated in such letter, return, or other document :
- (c.) Copies purporting to be printed by a Government printer, of Queen's Regulations, of royal warrants, of army circulars, and of rules made by Her Majesty, or a Secretary of State, in pursuance of this Act, shall be evidence of such regulations, royal warrants, army circulars, and rules :
- (d.) An army list or gazette purporting to be published by authority, and either to be printed by a Government printer, or to be issued, if in the United Kingdom, by Her Majesty's Stationery Office, and if in India, by some office under the Governor-General of India or the Governor of any Presidency in India, shall be evidence of the status and rank of the officers therein mentioned, and of any appointment held by such officers, and of the corps or battalion or arm or branch of the service to which such officers belong :
- (e.) Any warrants or orders made in pursuance of this Act by any military authority shall be deemed

Part IV.

s. 163.

to be evidence of the matters and things therein directed to be stated by or in pursuance of this Act, and any copies of such warrants or orders purporting to be certified to be true copies by the officer therein alleged to be authorised by a Secretary of State or Commander-in-Chief to certify the same shall be admissible in evidence.

* * * * *

Sub-section (f) is repealed by the Reserve Forces Act, 1882, but is re-enacted in substance by s. 24 (2) of that Act for both the army and militia reserve.

- (g.) Where a record is made in one of the regimental books in pursuance of any Act or of the Queen's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated :
- (h.) A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record :
- (i.) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace shall be evidence of the matters therein stated.

(2.) For the purposes of this Act the expression "Government printer" means any printer to Her Majesty, and in India any Government press.

See generally as to evidence of documents, chapter VI, paras. 30-40.

This section provides for the admissibility in evidence of a variety of documents or copies of documents used in the administration of military law, but does not make them conclusive evidence; therefore evidence may be given to contradict them-

In the case of such a document, for instance, as a letter respecting the service of a man, great caution is required as regards the identity of a prisoner with the person named in the document; and if the prisoner denies that the facts stated in an such

document apply to him, independent evidence of identity must be obtained. See Rule 46 (B) and note. **Part IV.**

(a.) *Purporting.* This expression in this and other sub-sections means that if the paper appears to be certified or to be signed as mentioned in the sub-section, it can be accepted without calling a witness to prove that it has been so certified, signed, &c., unless indeed some evidence is given to the contrary. If any evidence is produced casting a doubt on the authenticity of a document, the court should require evidence of the certificate or signature, &c., to be given by a witness.

**ss.
163-165.**

(c.) Since 1st January, 1888, the regulations formerly notified in Army circulars have been promulgated together with General Orders under the title of Army Orders. The provisions of this sub-section will continue to apply, notwithstanding the change of title.

(g.) For the purpose of this sub-section it is important that the records in the regimental books should be signed by the proper officer, namely, the officer required by this Act, by the Queen's Regulations, or by his military duty, to make the record. A record not in the regimental books is not made evidence.

164. Whenever any person subject to military law has been tried by any civil court, the clerk of such court, or his deputy, or other officer having the custody of the records of such court, shall, if required by the commanding officer of such person, or by any other officer, transmit to him a certificate setting forth the offence for which the person was tried, together with the judgment of the court thereon if he was convicted, and the acquittal if he was acquitted, and shall be allowed for such certificate a fee of three shillings. Any such certificate shall be sufficient evidence of the conviction and sentence or of the acquittal of the prisoner, as the case may be. **Evidence of civil conviction or acquittal.**

The object of this section is to facilitate the proof of a conviction or acquittal by a civil court.

165. The original proceedings of a court-martial, purporting to be signed by the president thereof and being in the custody of the Judge Advocate-General, or of the officer having the lawful custody thereof, shall be deemed to be of such a public nature as to be admissible in evidence on their mere production from such custody; **Evidence of conviction by court-martial.**

Part IV. and any copy purporting to be certified by such Judge Advocate-General or his deputy authorised in that behalf
ss.
165-166. or by the officer having such custody as aforesaid, to be a true copy of such proceedings or of any part thereof, shall be admissible in evidence without proof of the signature of such Judge Advocate-General, deputy, or officer; and a Secretary of State, upon production of any such proceedings or certified copy, may, by warrant under his hand, authorise the offender appearing therefrom to have been convicted and sentenced to any punishment, to be imprisoned and otherwise dealt with in accordance with the sentence in the proceedings or certified copy mentioned.

This section facilitates the proof of transactions of courts-martial, by declaring that the proceedings or certified copies thereof shall be admissible in evidence.

Purporting. See note to s. 163. *Shall be deemed to be of such a public nature, &c.* See 14 & 15 Vict., c. 99, s. 14, which makes a certificate of the document by the officer having the custody of it admissible in evidence, and requires the officer to furnish certified copies upon payment of not more than 4d. for every folio of 90 words, and enacts a punishment for false copies, and for the forgery of the officer's signature or seal.

A Secretary of State, by warrant under his hand. The object of this is to avoid such difficulties as arose in Lieutenant Allen's case (see Chapter VIII, paras. 35-37), where there is no doubt that an officer or soldier convicted abroad has been properly convicted, but no proper warrant has been sent home authorising his detention in custody. See s. 172 (4) and note.

Summary and other Legal Proceedings.

Prosecution
of offences
and re-
covery and
application
of fines.

166. (1.) A court of summary jurisdiction having jurisdiction in the place where the offence was committed, or in the place where the offender may for the time being be, shall have jurisdiction over all offences triable in a civil court under this Act, except any such offence as is declared by this Act to be a misdemeanour, or to be punishable on indictment; and any offence within the jurisdiction of a court of summary jurisdiction may be prosecuted, and the fine and forfeiture in respect thereof may be recovered on

summary conviction, in manner provided by the Summary Jurisdiction Acts. Part IV.

s. 166.

(2.) Any proceedings taken before a court of summary jurisdiction in pursuance of this Act shall be taken in accordance with the Summary Jurisdiction Acts so far as applicable.

(3.) A court of summary jurisdiction imposing a fine in pursuance of this Act may, if it seem fit, order a portion of such fine not exceeding one-half to be paid to the informer.

(4.) Where the maximum fine or imprisonment which a court of summary jurisdiction in England, when sitting in an occasional courthouse, is authorised by law to impose is less than the minimum fine or imprisonment fixed by this Act, the court may impose the maximum fine or imprisonment which such court is authorised by law to impose, but if required by either party, shall adjourn the case to the next practicable petty sessional court.

(5.) The court of summary jurisdiction in Ireland, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

(6.) Subject to the provisions of this Act with regard to the payment to the informer, fines and other sums recovered before a court of summary jurisdiction in pursuance of this Act shall, notwithstanding anything contained in any other Act, if recovered in England, be paid into the Exchequer, and if recovered in Ireland, shall be applied in manner directed by the Fines Act (Ireland), 1851, and any Acts amending the same. 14 & 15 Vict.
c. 90.

Part IV. Sects. 166, 167, and 168 are the sections ordinarily inserted in Acts of Parliament for the recovery of fines and the prosecution of offences before justices of the peace, police magistrates, or in Scotland sheriffs, who are all referred to as courts of summary jurisdiction. See the definition in s. 190 (35).

**ss.
166-167.**

See also as regards England, the Summary Jurisdiction Act, 1879 (42 and 43 Vict., c. 49); under which a court of summary jurisdiction in England must when trying a case consist of two justices or of a stipendiary magistrate.

Sub-section (4). Under the last-mentioned Act, two justices, if not sitting in a petty sessional courthouse, have only limited powers of fine and imprisonment; and such powers do not extend to imposing the minimum fine or imprisonment fixed in some cases by this Act. In such a case they may, under this sub-section, impose the maximum fine or imprisonment which they can impose in ordinary cases, i.e., 20s. or 14 days (42 & 43 Vict., c. 49, s. 20 (7)).

**Summary
proceedings
in Scotland.**

167. (1.) In Scotland, offences and fines which may be prosecuted and recovered on summary conviction may be prosecuted and recovered, and proceedings under this Act may be taken at the instance of the procurator fiscal of the court, or of any person in that behalf authorised by a Secretary of State or the Commander-in-Chief, or of any person authorised by this Act to complain.

**27 & 28 Vict.
c. 53.**

(2.) All fines under this Act in default of payment, and all orders made under this Act failing compliance, may be enforced by imprisonment for a term to be specified in the order or conviction, but not exceeding three months, and the conviction and warrant may be in the form number three of Schedule K of the Summary Procedure Act, 1864.

(3.) All fines and other sums recovered under this Act before a court of summary jurisdiction, subject to any payment made to the informer, shall be paid to the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty.

(4.) It shall be no objection to the competency of a person to give evidence as a witness in any prosecution for offences under this Act, that such prosecution is brought at the instance of such person.

(5.) Every person convicted of an offence under this Act shall be liable in the reasonable costs and charges of such conviction.

Part IV.
ss.
167-170.

(6.) All jurisdictions, powers, and authorities necessary for the purposes of this Act are conferred on the sheriffs and their substitutes and on justices of the peace.

(7.) The court may make, and may also from time to time alter or vary, summary orders under this Act on petition by the procurator fiscal of the court, or such person as aforesaid, presented in common form.

See also the Summary Jurisdiction (Scotland) Act, 1881, 44 & 45 Vict., c. 33.

168. All offences under this Act which may be prosecuted, and all fines under this Act which may be recovered on summary conviction, and all proceedings under this Act which may be taken before a court of summary jurisdiction, may be prosecuted and recovered and taken in the Isle of Man, Channel Islands, India, and any colony in such courts and in such manner as may be from time to time provided therein by law, or if no express provision is made, then in and before the courts and in the manner in which the like offences and fines may be prosecuted and recovered and proceedings taken therein by law, or as near thereto as circumstances admit.

Summary proceedings in Isle of Man, Channel Islands, India, and the colonies.

For definitions of India and colony see s. 190 (21), (23).

169. It shall be lawful for the Governor-General of India, and for the legislature of any colony, to provide by law for reducing any fine directed by this Act to be recovered on summary conviction to such amount as may appear to the Governor-General or legislature to be better adapted to the pecuniary means of the inhabitants, and also to declare the amount of the local currency which is to be deemed for the purposes of this Act to be equivalent to any sum of British currency mentioned in this Act.

Power Governor-General of India and legislature of colony as to fines.

170. (1.) Any action, prosecution, or proceeding against any person for any act done in pursuance or execution or

Protection of persons acting under Act.

(M.L.)

2 M

Part IV. intended execution of this Act, or in respect of any alleged
s. 170. neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom (which courts shall have jurisdiction to try the same wherever the matter complained of occurred) or in a supreme court in India, or in any colonial court of superior jurisdiction, provided the matter complained of occurred within the jurisdiction of such Indian or Colonial court respectively, and in no other court whatsoever.

With respect to actions for damages and other proceedings against officers acting without jurisdiction or in excess of their jurisdiction, see Chapter VIII, para. 40. This section prevents any such action or other proceeding being instituted after the expiration of six months from the date of the act or default complained of.

Actions can be brought in courts at home in respect of acts done abroad. See Chapter VIII, paras. 56, 57.

Miscellaneous.

Part IV.

171. Any power or jurisdiction given to, and any act or thing to be done by, to or before any person holding any military office may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service, or according to rules made under section seventy of this Act.

ss.
171-172.
Exercise of powers vested in holder of military office.

The object of this section is to prevent any legal difficulties arising from the usage of the army relating to the delegation of authority by one officer to another. For example, an officer authorised by the commanding officer to tell off prisoners can exercise the powers of the commanding officer under sect. 46. Again, a report which is directed by this Act to be made to a general officer or to an officer having power to convene or confirm courts-martial may be addressed to the adjutant or other person to whom such reports are usually addressed.

172. (1.) Where any order is authorised by this Act to be made by the Commander-in-Chief or the Adjutant-General, or by the Commander-in-Chief or Adjutant-General of the forces in India, or by any general or other officer commanding, such order may be signified by an order, instruction, or letter under the hand of any officer authorised to issue orders on behalf of such commander-in-chief, Adjutant-General, or general or other officer commanding, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.

Provisions as to warrants and orders of military authorities.

(2.) The foregoing enactment of this section shall extend to any order or directions issued in pursuance of this Act in relation to a military convict or military prisoner, and any such order or directions shall not be held void by reason of the death or removal from office of the officer signing or ordering the issue of the same, or by reason of any defect in such order or directions, if it be alleged in such order or directions that the convict or

(M.L.)

2 x 2

Part IV. prisoner has been convicted, and there is a good and valid conviction to sustain the order or directions.

s. 172.

(3.) An order in any case if issued in the prescribed form shall be valid, but an order deviating from the prescribed form if otherwise valid shall not be rendered invalid by reason only of such deviation.

(4.) Where any military convict or military prisoner is for the time being in custody, whether military or civil, in any place or manner in which he might legally be kept in pursuance of this Act, the custody of such convict or prisoner shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant, or other document, or the authority by or in pursuance whereof such convict or prisoner was brought into or is detained in such custody, and any such order, warrant, or document may be amended accordingly.

(5.) Where a military convict, or a military prisoner, or a person who is subject to military law and charged with an offence, is a prisoner in military custody, and for the purpose of conveyance by sea is delivered on board a ship to the person in command of the ship or to any other person on board the ship acting under the authority of the commander, the order of the military authority which authorises the prisoner to be conveyed by sea shall be a sufficient authority to such person, and to the person for the time being in command of the ship, to keep the said prisoner in custody and convey him in accordance with the order, and the prisoner while so kept shall be deemed to be kept in military custody.

Sub-section (1). The object of this sub-section is similar to that of s. 171. It will allow orders of a general or other officer to be signed by the staff officer or adjutant as authorised by the custom of the service, but the confirmation of courts-martial, and warrants or other documents relating to imprisonment or the infliction of any punishment must be signed by the officer himself.

Sub-sections (2) and (3) are introduced with a view to prevent

military proceedings from being rendered void by merely technical objections. Part IV

Sub-section (3). *Prescribed.* See Rule 132.

Sub-section (4). This sub-section is introduced for the same object as sub-sections (2) and (3). These sub-sections would probably not meet a case where the order, warrant, or document is issued by a person having no authority to issue it. In such a case it will be advisable to procure a warrant from a Secretary of State under s. 165.

ss.
172-174.

173. If any soldier on furlough is detained by sickness or other casualty rendering necessary any extension of such furlough in any place, and there is not any officer in the performance of military duty of the rank of captain, or of higher rank, within convenient distance of the place, any justice of the peace who is satisfied of such necessity may grant an extension of furlough for a period not exceeding one month ; and the said justice shall by letter immediately certify such extension and the cause thereof to the commanding officer of such soldier if known, and if not, then to a Secretary of State. The soldier may be recalled to duty by his commanding officer or other competent military authority, and the furlough shall not be deemed to be extended after such recall, but, save as aforesaid, the soldier shall not in respect of the period of such extension of furlough be liable to be treated as a deserter or as absent without leave. Furlough in case of sickness.

A soldier who makes a false statement to an officer or justice in respect of extension of his furlough may be tried and punished by court-martial, s. 27 (4).

174. (1.) When a person holds a canteen under the authority of a Secretary of State or the Admiralty, it shall be lawful for any two justices within their respective jurisdictions to grant, transfer, or renew any licence for the time being required to enable such person to obtain or hold any excise licence for the sale of any intoxicating liquor, without regard to the time of year, and without regard to the requirements as to notices, certificates, or otherwise, of any Acts for the time being in force affecting Licences of canteens.

Part IV. such licences ; and excise licences may be granted to such person accordingly.

174-174A. (2.) For the purposes of this section the expression licence includes any licence or certificate for the time being required by law to be granted, renewed, or transferred by any justices of the peace, in order to enable any person to obtain or hold any excise licence for the sale of any intoxicating liquor.

Use of
recreation
rooms
without
licence.

25 Geo. 2,
c. 36.

6 & 7 Vict.,
c. 68.

174A. Notwithstanding anything in the Disorderly Houses Act, 1751, or in the Theatres Act, 1843, where a recreation room is managed or conducted under the authority of a Secretary of State or the Admiralty, it may be used for public dancing, music, or other public entertainment of the like kind or for the public performance of stage plays, without any licence in pursuance of those Acts, or either of them.

The object and effect of this section is to dispense with the necessity for a licence being obtained, where music, dancing, or any other public entertainment is carried on in a recreation room which is managed under the authority of the Secretary for War or of the Admiralty.

PART V.

Part V.

APPLICATION OF MILITARY LAW, SAVING
PROVISIONS, AND DEFINITIONS.

Introductory Observations.

Part V of the Act points out the persons who are subject to military law, that is to say, who are liable to be tried and punished by courts-martial for military and in some circumstances for civil offences under the provisions of the Act. Application of Act to persons as officers or soldiers.

Such persons are of three descriptions: first, the regular forces, that is to say, the British forces, the Indian forces, and the colonial forces; secondly, the auxiliary forces, that is to say, the militia, the yeomanry, and the volunteers; thirdly, persons subject to military law not belonging to either the regular or the auxiliary forces, that is to say, either followers of the regular forces, or persons employed in or with the regular forces when on active service. The regular forces include the Royal Marines when on shore, and the reserve forces when called out.

The sections relating to the liability of persons subject to military law divide them as follows: (i) persons subject to military law as officers (s. 175), and (ii) persons subject to military law as soldiers (s. 176). Sections are then added pointing out the modifications which are necessary with respect to the Royal Marines, the Indian forces, and the auxiliary forces, and with respect to certain members of the regular forces, that is to say, warrant officers and non-commissioned officers, and with respect to the reserve; also with respect to persons who, though subject to military law as above stated, belong neither to the regular nor to the auxiliary forces.

The officers of the land forces (commonly called officers of the regular forces) form of course the principal class of persons subject to military law as officers. Officers of regular forces.

The expression "officer" is defined by s. 190 (4) of the Act to mean an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch, or part thereof; also any person who by virtue of his commission is appointed to any department or corps of any of the said forces; also any person, whether retired or not, who by virtue of his commission, or otherwise, is legally entitled to the style and rank of an officer of any of the said forces.

Part V. Every officer, as so defined, is not necessarily subject to military law. By sect. 175 (1), that law applies to officers of the regular forces on the active list; but officers of the regular forces who are not on the active list are not *as such* subject to military law, though they become so subject if employed on military service under an officer of the regular forces, or if they are members of the permanent staff of the militia, yeomanry, or volunteers.

The meaning of "active list" must be ascertained by reference to the Royal Warrant relating to pay. Under the warrant now in force, service on the active list includes full pay service and half pay service, and full pay service includes—

- (a.) Service with a regiment or on the staff;
- (b.) Service while seconded; and
- (c.) Service while on the temporary reserve list of the Engineers.

Under the above warrant "half-pay" applies only to officers who are on temporary half-pay in anticipation of future employment in service on the active list. Officers who have retired from the active list are no longer included under the expression "half-pay officers," and the pay they receive is termed "retired pay."

By s. 190 (4) warrant and other officers holding honorary commissions are declared to be officers within the meaning of the Act, and are consequently amenable to military law as officers.

Officers of
marines and
of Indian
forces.

The expression "regular forces" is defined by s. 190 (8) to include the Royal Marines and Her Majesty's Indian forces, and officers in those forces are therefore subject to military law as above mentioned, but with certain modifications made by the Act in their respective cases, the details of which are mentioned in ss. 179 and 180 and notes thereon. The most important are as follows:—

As regards the Marines, the jurisdiction of the Admiralty over them is not interfered with: and when borne on the books of any ship in commission, they are, speaking generally, subject to the laws governing the Navy.

As regards Her Majesty's Indian forces, *native* officers, soldiers, and followers of Her Majesty's Indian forces are amenable to the Indian Articles of War, though courts-martial for their trial *may* be convened by any officers duly authorised to convene courts-martial under this Act.

Officers of
militia.

Next in importance are the militia officers, who are at all times subject to military law, s. 175 (3).

Officers of
yeomanry and volun-
teers.

Yeomanry and volunteer officers, on the other hand, not belonging to the permanent staff, are only subject to military law when in actual command of men who are subject to military law, or when their corps is called out, or when, with their own consent,

they are attached to or doing duty with any body of troops (whether regular or auxiliary) subject to military law, or are ordered on duty by the military authorities, s. 175 (5) (6). The effect of these enactments is shortly, that yeomanry and volunteer officers are subject to military law whenever the men actually under their command are so subject, or their corps is on actual military service; and also whenever they are doing duty, apart from their corps, with any body of troops (whether regular or auxiliary) who are so subject. As to "actual military service," in the case of volunteers, see s. 17 of the Volunteer Act, 1863 (26 & 27 Vict., c. 65).

There remain certain persons who, without being commissioned officers of any branch of Her Majesty's service, are nevertheless declared in particular circumstances to become subject to military law as officers, namely :—

Other persons subject to military law as officers.

(i.) Officers of forces raised out of the United Kingdom and India, and serving under an officer of the regular forces, see s. 175 (4) and note.

(ii.) Officers of strictly colonial forces. See s. 177 and note.

(iii.) Persons who under the orders of a Secretary of State, or of the Governor-General of India, accompany in an official capacity any of Her Majesty's troops on active service in any place beyond the seas; with the qualification that such a person, if a native of India amenable to Indian military law, will be subject to that law. See s. 175 (7) and note.

(iv.) Persons accompanying a force on active service, and holding from the commanding officer of the force passes entitling them to be treated as officers. See s. 175 (8) and note.

All soldiers of the regular forces are, as a matter of course, subject to military law (s. 176 (1)), including in the expression "soldier" warrant officers not having honorary commissions, and non-commissioned officers, s. 190 (5), (6). There are, however, certain special provisions as to the trial and punishment of warrant officers and non-commissioned officers (ss. 182-183), which must be borne in mind in dealing with the case of any such officer. Here also it must be remembered that the regular forces include, subject to certain modifications, the Royal Marines and Her Majesty's Indian forces.

Soldiers of the regular forces.

S. 176 (2), coupled with s. 181 (2), obviates, by an express provision, any doubt that could possibly have been raised as to the application of military law to all non-commissioned officers and men of the permanent staff of the militia, yeomanry, and volunteers.

Non-commissioned officers and men of forces raised out of the United Kingdom and India, and under the command of an officer

forces.

Part V. of regulars, are also subject to military law as soldiers. S. 176 (8), and note. As to men of colonial forces, see s. 177, and note.

Pensioners. All pensioners not otherwise subject to military law are made so whenever they are employed in military service under the orders of an officer of the regular forces, and the Act will apply to them as if they were part of the regular forces: ss. 176 (4) and 178, and notes.

Reserve and auxiliary forces. Besides the regular forces, men of the reserve and auxiliary forces are subject to military law when called out for service.

This liability arises partly under the Army Act and partly under the Acts relating to the reserve and auxiliary forces respectively. See chapter IX, para. 91, and chapter XI.

Men in the Army or Militia Reserve Force when called out are subject to military law under the Army Act (see s. 176 (5)), and Reserve Forces Act, 1882, s. 14.

Army and Militia Reserve. A Militia Reserve man cannot as such be called out in aid of the civil power, and, except on the occasions above mentioned, is not, except so far as he may be a militiaman, subject to military law. An Army Reserve man, on the other hand, is in a modified way at all times subject to military law, inasmuch as he is liable to be tried by a court-martial for the offences mentioned in s. 6 of the Reserve Forces Act, 1882, which relates to failure to attend at any place when required, insubordinate behaviour to superior officers, and to compliance with the regulations for the payment or government of the force.

Militiamen. A militiaman as above mentioned (see chapter XI, para. 46), is liable to a preliminary training; and every part of the militia is liable to be called out for an annual training or to be embodied for actual service. When the corps or other body to which a non-commissioned officer or man belongs is called out for training, or embodied, that non-commissioned officer or man is subject to military law. The individual militiaman is also subject to military law during his preliminary training, or when he is undergoing any other training with a portion of the regular forces or otherwise, or when he is attached to or otherwise acting as part of the regular forces. See s. 176 (6) (which superseded ss. 56 and 57 of the Militia (Voluntary Enlistment) Act, 1875, now repealed), and Militia Act, 1882, ss. 23-27.

As to the liability of a member of the yeomanry to be called out, and the power of yeomanry to assemble voluntarily, see chapter XI, para. 59.

Yeomanry. If a corps of yeomanry is called out on actual military service or is being trained or exercised, whether it has been called out or assembled voluntarily, and whether it is serving alone or with any portion of the regular forces or of the militia when subject to military law, every member of that corps is subject to military

law. Individual members of a corps of yeomanry are also subject to military law when they are attached to or acting with any regular forces or when they are serving in aid of the civil power; s. 176 (7); 44 Geo. 3, c. 54, ss. 22, 23. So far as the Yeomanry Acts are not covered by the terms of the Army Act, s. 176, the Yeomanry may be subject to military law under the circumstances mentioned in their own Acts, as a reference in those Acts to the Mutiny Act must by virtue of the provisions of the Army Discipline and Regulation (Commencement) Act, 1879, be construed to refer to the Army Act. See s. 5 of the Act of 1879.

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When a volunteer corps is called out into actual military service (see chapter XI, para. 65), every member of that corps is subject to military law. Individual members of the volunteer corps are also subject to military law when they are being trained or exercised with or are attached to or acting with any regular force, or when they are being trained or exercised with any portion of the militia when subject to military law.

Volunteers.

It is the duty of the commanding officer of a volunteer force, except when the corps is called out, to provide for members of the corps, before entering on any service in which they will become subject to military law, being informed that they will be so subject, and having an opportunity of withdrawing from that service; but the absence of such notice will not exempt the volunteer. See s. 176 (8), which has superseded s. 23 of the Volunteer Act, 1863 (26 and 27 Vict., c. 65), now repealed.

When a volunteer is subjected to military law, he may be punished by dismissal, in the event of his committing any offence triable by a court-martial or by a commanding officer; s. 181 (6).

In the case of the auxiliary forces the distinction between the case of the corps being subject to military law and of individual members being subject to military law is important. In the former case every member of the corps, whether present with the corps or not, is subject to military law, and if absent improperly can be dealt with as a deserter or absentee without leave (see Militia Act, 1882, ss. 23, 24, as to militiamen). Wherever the individual members only are subject, absent members are exempt. The reason is obvious, especially in the case of the volunteers. If the corps is called out for actual service under proclamation, anyone who does not attend is a deserter. If, on the other hand, a volunteer corps goes out for a field day with a portion of the regular forces, it is optional with the members of that corps whether they do or do not attend, but if they attend they must be subject to the same rules and discipline as the forces with which they are serving, and must therefore be subject to military law.

General provisions respecting application of military law to auxiliary forces.

Part V.

s. 175.

Persons not
belonging
to Her
Majesty's
forces, but
subject to
military
law as
soldiers.

Lastly. When troops are on active service abroad it is absolutely necessary for the sake of military operations and discipline, that civilians who accompany them should be under the control of military officers and tribunals.

Civilians who accompany troops in an official capacity or who have obtained the privilege of a pass from the commanding officer of the force will, as already noticed, be subject to military law as officers. All other civilians, commonly known as followers, who accompany the troops either as sutlers or on other business connected with the forces, or for purposes of business not necessary to the forces, or of pleasure or otherwise, will be subject to military law as soldiers.

The only modification in the application of the Act to persons who do not belong to Her Majesty's forces which requires notice here, is that such a person cannot be punished by a commanding officer and cannot be tried by regimental court-martial.

As to the trial and punishment of a person who or whose corps has ceased to be subject to military law since the commission of the offence, see s. 158 and note.

Persons subject to Military Law.

Persons
subject to
military
law as
officers.

175. The persons in this section mentioned are persons subject to military law as officers, and this Act shall apply accordingly to all the persons so specified ; that is to say,

- (1.) Officers of the regular forces on the active list, within the meaning of any Royal Warrant for regulating the pay and promotion of the regular forces, and officers not on such active list who are employed on military service under the orders of an officer of the regular forces who is subject to military law :
- (2.) Officers who are members of the permanent staffs of any of the auxiliary forces, and are not otherwise subject to military law :
- (3.) Officers of the militia other than members of the permanent staff :
- (4.) All such persons not otherwise subject to military law as may be serving in the position of officers of any troops or portion of troops raised by order

of Her Majesty beyond the limits of the United Kingdom and of India, and serving under the command of an officer of the regular forces :

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s. 175.

Provided that nothing in this Act shall affect the application to such persons of any Act passed by the legislature of a colony :

- (5.) Officers of the yeomanry, and officers of the volunteers, whenever in actual command of men who are in pursuance of this Act, subject to military law, or when their corps is on actual military service :
- (6.) Any officer of the yeomanry or volunteers, whether in receipt of pay or otherwise, during and in respect of the time when with his own consent he is attached to or doing duty with any body of troops for the time being subject to military law, whether of the regular or auxiliary forces, or, with his own consent, is ordered on duty by the military authorities :
- (7.) Every person not otherwise subject to military law who under the general or special orders of a Secretary of State or of the Governor-General of India accompanies in an official capacity equivalent to that of officer any of Her Majesty's troops on active service in any place beyond the seas, subject to this qualification, that where such person is a native of India, he shall be subject to Indian military law as an officer :
- (8.) Any person, not otherwise subject to military law accompanying a force on active service who shall hold from the commanding officer of such force a pass revocable at the pleasure of such commanding officer entitling such person to be treated on the footing of an officer :
- (9.) The persons holding commissions as officers in the Indian Army reserve when such officers are called out in any military capacity.

Part V. Sub-section (4.) This is not meant to include strictly colonial forces, but only forces raised at the Imperial expense. It will include officers of the Royal Malta Artillery. See s. 176 (3).
ss.
175-176. As to strictly colonial forces, see s. 177.

Sub-section (5). It will be observed that officers of the yeomanry and volunteers are not subject to military law under this sub-section, except when they are in actual command of men subject to military law; see s. 176 (7) and (8), or when their corps is on actual military service. Consequently, an officer of volunteers who is not present at a field day at which the volunteers are brigaded with regular troops is not subject to military law, though if he were present with his corps he would be so subject. Such an officer may also be subject to military law under the Acts relating to the yeomanry and volunteers. (See as to yeomanry, 44 Geo. 3, c. 54, ss. 22, 23; as to volunteers, 26 and 27 Vict., c. 65, s. 17, and A.D. and R. (Commencement) Act, 1879, s. 5.)

Sub-sections (7) and (8). These sub-sections make certain persons subject to military law as officers, who would otherwise be subject under s. 176 (10) to trial and punishment as soldiers. The first extends to persons attached to a military expedition by order of the Secretary of State or the Governor-General of India in a diplomatic, scientific, or other official capacity. The second would apply to persons like contractors or newspaper correspondents, who obtain passes from the commanding officer of the force directing them to be treated as officers. It will be observed that an official of the Governor-General, who is a native of India, will be subject to Indian military law. See s. 180 (2).

Sub-section (9) was added by the Army (Annual) Act, 1890.

Persons
subject to
military
law as
soldiers.

176. The persons in this section mentioned are persons subject to military law as soldiers, and this Act shall apply accordingly to all the persons so specified; that is to say,

- (1.) All soldiers of the regular forces :
- (2.) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to military law :
- (3.) All non-commissioned officers and men serving in a force raised by order of Her Majesty beyond the limits of the United Kingdom and of India, and

serving under the command of an officer of the regular forces :

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s. 176.

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony.

- (4.) All pensioners not otherwise subject to military law who are employed in military service under the orders of an officer of the regular forces :
- (5.) All non-commissioned officers and men belonging to the army reserve force or the militia reserve force,—
 - (a.) When called out for training and exercise ;
and
 - (b.) When called out for duty in aid of the civil power ; and
 - (c.) When called out on permanent service under Her Majesty's proclamation :
- (6.) All non-commissioned officers and men in the militia of the United Kingdom,—
 - (a.) During their preliminary training ; and
 - (b.) When they or the body of militia to which they belong are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
 - (c.) When attached to or otherwise acting as part of or with any regular forces ;
and
 - (d.) When embodied :
- (7.) All non-commissioned officers and men belonging to the yeomanry force of the United Kingdom,—
 - (a.) When they or their corps are being trained or exercised, either alone or with any portion of regular forces or

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s. 176.

- with any portion of the militia when subject to military law ; and
- (b) When they are attached to or otherwise acting as part of or with any regular forces ; and
 - (c.) When their corps is on actual military service ; and
 - (d.) When serving in aid of the civil power :
- (8.) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom,—
- (a.) When they are being trained or exercised with any portion of the regular forces or with any portion of the militia when subject to military law ; and
 - (b.) When they are attached to or otherwise acting as part of or with any regular forces ; and
 - (c.) When their corps is on actual military service :

Provided that it shall be the duty of the commanding officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to military law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service.

- (9.) All persons who are employed by or are in the service of any of Her Majesty's troops when employed on active service beyond the seas, and who are not under the former provisions of this Act subject to military law :
- (10.) All persons not otherwise subject to military law who are followers of or accompany Her Majesty's

troops, or any portion thereof, when employed on active service beyond the seas; subject to this qualification that where any such persons are employed by or are followers of or accompany any portion of Her Majesty's forces consisting partly of Her Majesty's Indian forces subject to Indian military law, and such persons are natives of India, they shall be subject to Indian military law.

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s. 176.

Sub-section (2). See s. 181 (2).

Otherwise subject, &c. Soldiers posted to the volunteer permanent staff in their territorial regiment would be "otherwise," i.e., as being in the regular forces, subject to military law.

Sub-section (3). This is not intended to include strictly colonial forces, but only forces raised at the Imperial expense, whose maintenance is voted annually by Parliament. It might, however, no doubt extend to a force raised under a Colonial Act, but under the Imperial control. But strictly colonial forces are dealt with by s. 177.

Sub-section (4). See s. 178. Some pensioners are on the permanent staff of the auxiliary forces. Those who are not from that or from any other cause subject to military law, will only be so subject if they are actually employed in military service under the orders of an officer of the regular forces. A pensioner employed as canteen steward, though wearing no uniform and performing no military duty, has been held to be subject to military law under this sub-section. *Re Flint*, L.R., 15 Q.B.D., 488.

Sub-section (5). As to the power to try by court-martial an Army Reserve man who on two consecutive occasions fails to comply with the regulations respecting pay, or fails to attend at an appointed place, or is insubordinate to a superior officer, or obtains pay by any fraudulent means, or fails to comply with the regulations for the government of the forces, see s. 6 of the Reserve Forces Act, 1882.

Sub-section (6). The local militia, if they were to be raised (see Chapter IX, paras. 103, 105), would be also subject to military law under the Acts relating to them, and the A. D. and R. (Commencement) Act, 1879, s. 5. As regards the application of the Act to these forces, see ss. 178, 181.

Sub-section (7). As to the provisions of the Yeomanry Acts, making the yeomanry subject to military law, see introductory observations to this part of the Act. As to the application of the Act to the yeomanry, see ss. 178, 181.

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Part V. Sub-section (8). As to the application of the Act to volunteers, see ss. 178, 181, and introductory observations to this part of the Act. As to "actual military service," see 26 & 27 Viet., c. 65, s. 17.

Informed. This information must be given on each occasion of entering on service, but it may be given by an insertion in the notice for the corps to parade that a person who attends will become subject to military law, and that he is at liberty not to attend.

Sub-sections (9) and (10). See introductory observations to this part of the Act.

Persons
belonging
to colonial
forces and
subject to
military
law as
officers or
soldiers.

177. Where any force of volunteers, or of militia, or any other force, is raised in India or in a colony, any law of India or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and where any such force is serving with part of Her Majesty's regular forces, then so far as the law of India or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the general officer commanding Her Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men respectively mentioned in the two preceding sections of this Act.

For definitions of "India" and "colony," see s. 190 (21) (23).

This section applies to what may be termed strictly colonial forces, that is to say, forces raised on the responsibility of the government of the colony.

So long as such forces are within the colony their discipline can be provided for by the law of the colony. This section removes any doubts as to whether that law would apply to such forces when outside the limits of the colony.

In order to prevent difficulties arising from deficiencies of the colonial law in cases where the colonial forces are serving with the regular forces, the section provides that such deficiencies may

be remedied by the application of the Army Act, subject to modification made by general orders of the general officer commanding the regular forces in question.

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177-179.

178. When officers, non-commissioned officers, and men belonging to the auxiliary forces, or any pensioners, are subject to military law in pursuance of this Act, such officers, non-commissioned officers, men and pensioners shall be subject to this Act in all respects as if they were part of the regular forces, and the provisions of this Act shall be construed as if such officers, non-commissioned officers, men, and pensioners were included in the expression "regular forces": Provided that nothing in this section contained shall affect the conditions of service of any officer, non-commissioned officer, or man belonging to such auxiliary forces, or of any pensioner.

Mutual relations of regular forces and auxiliary forces.

The effect of this section combined with s. 59 (1) and with the repeal of the provisions of the Militia and Volunteer Acts by which members of those corps are to be tried by their own officers, is to enable regular officers, militia officers, and also, when subject to military law, yeomanry and volunteer officers, to sit indiscriminately on courts-martial for the trial of members of the regular forces and members of the auxiliary forces. Rule 20 (B), however, provides that the militia and volunteers respectively are, if practicable, to be represented on any court-martial trying a militiaman or volunteer. As to removal of doubts respecting command, see s. 71.

It will be recollected that under s. 158 a militiaman or volunteer who has ceased to be subject to military law can, within three months afterwards, be tried by court-martial for an offence committed while he was so subject.

179. In the application of this Act to Her Majesty's Royal Marines, the following modifications shall be made:

Modification of Act with respect to Royal Marines.

- (1.) Nothing in this Act shall prejudice any power of the Admiralty to make Articles of War for the Royal Marines or otherwise prejudice the authority of the Admiralty over the Royal Marines or confer on any officers who are not officers of the Royal Marines any greater authority to command

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s. 179.

the Royal Marines than they have heretofore used ; and a general court-martial for the trial of an officer or man in the Royal Marines shall not be convened except by an officer authorised by a warrant from the Admiralty in pursuance of this section, and except that where such officer or man while subject to this Act is serving beyond the seas with any other portion of the regular forces, and in the opinion of the general or other officer commanding those forces (such opinion to be stated in the order convening the court and to be conclusive) there is not present any officer authorised by warrant from the Admiralty to convene a general court-martial, a general court-martial convened by such general or other officer, if authorised to convene general courts-martial, may try such officer or man.

- (2.) A district court-martial for the trial of a man in the Royal Marines may be convened by any officer having authority to convene a district court-martial for the trial of any soldier of any other portion of the regular forces.
- (3.) Any power in relation to the convening of courts-martial, or of authorising an officer to convene courts-martial, or to delegate the powers of convening courts-martial, or of confirming the findings and sentences of courts-martial, or otherwise in relation to courts-martial, which under this Act Her Majesty may exercise by any warrant or warrants, may be exercised in Her Majesty's name by a warrant or warrants from the Admiralty ; and any such warrant may be addressed to any officer to whom any warrant of Her Majesty can be addressed.
- (4.) Any power vested by this Act in Her Majesty in relation to the confirmation of the findings and

sentences of court-martial, or otherwise in relation to courts-martial, may be exercised by the Admiralty. Part V.
s. 179.

- (5.) Without prejudice to any power of confirmation, the findings and sentences of any general or district court-martial on an officer or man of the Royal Marines may be confirmed by an officer authorised under this section to convene the same or by any officer otherwise authorised under this Act to confirm the findings and sentences of general or district courts-martial, as the case may be, for the trial of any soldier of any other portion of the regular forces.
- (6.) Any power vested in Her Majesty by this Act in relation to the making of rules, or to any order with respect to pay, or to any complaint in respect of an officer who thinks himself wronged, shall be vested in and exercised by the Admiralty, and the provisions of this Act respectively relating to such rules, orders, and complaints shall be construed, so far as respects the Royal Marines, as if the "Admiralty" were substituted for Her Majesty, as well as for the Secretary of State.
- (7.) Anything required or authorised by this Act to be done by, to, or before a Secretary of State, the Commander-in-Chief, Adjutant-General, or Judge Advocate-General may, as regards the Royal Marines, be done by, to, or before the Admiralty; and the provisions of this Act shall be construed, so far as respects the Royal Marines, as if "the Admiralty" were substituted for "Secretary of State," "Commander-in-Chief," "Adjutant-General," and "Judge Advocate-General," wherever those words occur.
- (8.) Anything required or authorised by this Act to be

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done by, to, or before the Commander-in-Chief of the forces in India, or the general or other officer commanding the forces in any colony or elsewhere may, as regards the Royal Marines, be done by, to, or before such officer as the Admiralty may by warrant from time to time appoint in that behalf, and if no such appointment is made, by such Commander-in-Chief or general or other officer.

- (9.) Anything authorised by this Act to be done by Royal Warrant may be done, as regards the Royal Marines, by warrant of the Admiralty; and the provisions of this Act with respect to Royal Warrants printed by the Government printer shall apply to any warrants of the Admiralty under this Act.
- (10.) Anything authorised to be done by the deputy of the Judge Advocate-General may be done by any one of the Commissioners for executing the office of Lord High Admiral, or by a secretary of the Admiralty.
- (11.) In the provisions of this Act with respect to evidence, the expression "Queen's Regulations" shall be deemed to include Admiralty Regulations.
- (12.) Nothing in the provisions of this Act relating to the term of enlistment, to the conditions of service, to appointment or transfer, to transfer to the reserve, to the re-engagement or prolongation of service, or to forfeiture of service of a soldier of the regular forces, or to the rules for reckoning service for discharge or transfer to the reserve, shall apply to the Royal Marines.

Save that if regulations made by a Secretary of State and the Admiralty provide for the transfer of men of the Royal Marines to any

other part of Her Majesty's regular forces, a man of the Royal Marines may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a soldier of the said part of Her Majesty's regular forces in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of this Act.

And save that if any regulations so made provide for the transfer to the Royal Marines of men belonging to any other part of Her Majesty's regular forces, a man belonging to such part may, with his consent, be so transferred in accordance with the said regulations, and, subject to those regulations, shall become a man of the Royal Marines in like manner, so nearly as circumstances admit, as if he had been enlisted in pursuance of the Acts relating to the Royal Marines.

- (13.) A marine on his re-engagement shall make a declaration either before a justice of the peace or person having under this Act the same authority as a justice of the peace for the purposes of enlistment, or before a naval officer commanding any ship commissioned by Her Majesty, or before the commanding officer of any battalion or detachment of Royal Marines in the form from time to time directed by the Admiralty.
- (14.) A man in the Royal Marines shall for absence without leave, on conviction of that offence by court-martial, and for fraudulent enlistment, forfeit his service in like manner as he forfeits it for desertion under the Acts relating to the Royal Marines.
- (15.) Officers and men of the Royal Marines, during

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29 & 30 Vict.,
c. 109, as
amended
by 47 and 48
Vict., c. 39.

the time that they are borne on the books of any ship commissioned by Her Majesty (otherwise than for service on shore), shall be subject to the Naval Discipline Act, and to the laws for the government of officers and seamen in the Royal Navy, and to the rules for the discipline of the Royal Navy for the time being, and shall be tried and punished for any offence in the same manner as officers and seamen in the Royal Navy.

Provided that—

(a.) The last-mentioned provision shall not prevent the application of this Act to any person dealing with or having any relations with any such officer or man of the Royal Marines, or to any such officer or man if found on shore as a deserter or absentee without leave ; and

(b.) If any such officers or men of the Royal Marines are employed on land, the senior naval officer present may, if it seems to him expedient, order that they shall, during such employment, be subject to military law under this Act, and while such order is in force they shall be subject to military law under this Act accordingly.

- (16.) If any officer or man of the Royal Marines who is borne on the books of any ship commissioned by Her Majesty commits an offence for which he is not amenable to a naval court-martial, but for which he can be punished under this Act, he may be tried and punished for such offence under this Act.
- (17.) The Admiralty may direct that an officer or man of the Royal Marines may be tried under this Act for any offence committed by him on shore, whether he be or be not amenable to a naval court-martial for such offence, or be or be not

borne on the books of any ship commissioned by Her Majesty. Part V.
s. 179.

- (18.) Where any officer or man of the Royal Marines is on board any ship commissioned by Her Majesty, but is borne on the books thereof for service on shore, he shall be subject to the Naval Discipline Act to such extent and under such regulations as Her Majesty by Order in Council from time to time directs, and so far as she does not so direct as is for the time being directed by Order in Council with respect to the other regular forces. 29 & 30 Vic.
c. 109, as
amended by
47 and 48
Vict., c. 39.
- (19.) Any naval prison within the meaning of the Naval Discipline Act shall be deemed to be included in the definition of a public prison for the purposes of this Act, and the Admiralty shall not have any authority to establish any military prison under this Act. 29 & 30 Vict.
c. 109.
- (20.) In this section the expression "Admiralty" means the Lord High Admiral or the Commissioners for executing the office of the Lord High Admiral for the time being, or any two of them.
- (21.) The expression "man of the Royal Marines" includes a non-commissioned officer of the Royal Marines.

As the Admiralty by commission from the Crown exercise the powers of the Crown in relation to the navy, the powers which by this Act are vested in Her Majesty in relation to the army are by this section given to the Admiralty.

Sub-section (1.) This sub-section prevents an officer of the army from convening a general court-martial for the trial of an officer or man in the marines except under the circumstances here mentioned. The confirmation is provided for by sub-sections (4) and (5).

Sub-sections (3)—(5). These confer on the Admiralty the power of confirming the findings and sentences of general courts-martial, and of conferring by warrant on officers the power to confirm the findings and sentences of both general and district courts-martial.

Part V. Sub-section (5) provides that in the absence of any such confirmation by the Admiralty or by an officer holding a warrant from the Admiralty, the finding and sentence of a general or district court-martial on a marine may be confirmed by an officer holding a warrant which enables him to confirm the findings and sentences of general or district courts-martial, as the case may be, on soldiers of other portions of the regular forces.

—
ss.
179-180.

Sub-section (12). The formalities in the enlistment of the marines will be those contained in Part II of this Act, but the term of enlistment, the conditions of service, transfer, and forfeiture of service, will remain under the Acts relating to the marines, 10 & 11 Vict. c. 63; 20 Vict. c. 1.

Sub-section (15). Proviso (a). This proviso refers to s. 156.

Proviso (b). *Employed on land*. This refers to employment for a length of time amounting to an expedition, and does not refer to the mere landing of marines for a temporary purpose.

Sub-section (17). *Offence*. This means an offence punishable under this Act.

Modifica-
tion of Act
with respect
to Her
Majesty's
Indian
forces.

180. (1.) In the application of this Act to Her Majesty's forces when serving in India the following modification shall be made :—

A court-martial may take the same proceedings for the punishment of a person not subject to military law who, in any part of India, commits any offence as a witness before a court-martial, or is guilty of a contempt of a court-martial, as might be taken by any civil court in that part of India in the case of the like offence in that court, and any court in which such proceedings are taken shall have jurisdiction to punish such person accordingly.

(2.) In the application of this Act to Her Majesty's Indian forces, the following modifications shall be made :—

(a). Nothing in this Act shall prejudice or affect the Indian military law respecting officers or soldiers or followers in Her Majesty's Indian forces, being natives of India; and on the trial of all offences committed by any such native officer, soldier, or follower, reference shall be

had to the Indian military law for such native officers, soldiers, or followers, and to the established usages of the service, but courts-martial for such trials may be convened in pursuance of this Act.

(b.) For the purposes of this Act the expression "Indian military law" means the Articles of War or other matters made, enacted, or in force or which may hereafter be made, enacted, or in force under the authority of the Government of India; and such articles or other matters shall extend to such native officers, soldiers, and followers wherever they are serving.

(c.) The Governor of any presidency in India may suspend the proceedings of any court-martial held in India on an officer or soldier belonging to Her Majesty's Indian forces within such presidency.

(d.) An officer belonging to Her Majesty's Indian forces who thinks himself wronged by his commanding officer, and on due application made to him does not receive the redress to which he may consider himself entitled, may complain to the Commander-in-Chief in the presidency to which such officer belongs, who shall cause his complaint to be inquired into, and thereupon report to the Governor of such presidency in order to receive the further directions of that Governor.

(e.) A court-martial may sentence an officer of the Indian staff corps to forfeit all or any part of his army or staff service, or all or any part of both.

(f.) The Governor of any of the presidencies in India may reduce any warrant officer not holding an honorary commission who is

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s. 180.

serving in or belonging to such presidency to a lower grade of warrant rank, or may remand any such warrant officer to regimental duty in the regimental rank held by him immediately previous to his appointment to be a warrant officer.

(g.) The provisions of this Act relating to warrant officers not holding honorary commissions shall apply to hospital apprentices in India although not appointed by warrant.

(h.) Part II of this Act shall not apply to Her Majesty's Indian forces, but persons may be enlisted and attested in India for medical service or for other special service in Her Majesty's Indian forces for such periods, by such persons, and in such manner as may be from time to time authorised by the Governor-General of India.

(3.) In this Act, so far as regards India, any reference to an indictable offence, or an offence punishable on indictment, shall be deemed to refer to an offence punishable with rigorous imprisonment.

Sub-section (1). As an Indian court has not the power which an English court has to punish contempt committed before itself, this sub-section gives the necessary jurisdiction to punish a civilian guilty of contempt of a court-martial.

Sub-section (2). *Natives of India*, see definition in s. 190 (22).

Natives of India are subject to the Indian Articles of War, and the Acts made by the Government of India; but a court-martial on such natives, although it must accord in every respect with a court convened under the Indian military law, may under this sub-section be convened by an officer authorised to convene a court-martial under this Act. On the other hand, Europeans in the Indian forces are subject to the laws and regulations for the government of the British army. Half-castes and persons born in India, but of certain degrees of European descent, specified in the Indian Articles of War, are, for the purposes of this Act, Europeans. It will be observed that the Indian Articles of War are by this sub-section expressly extended to the natives of India belonging to the Indian forces in whatever part of the world they are serving.

Sub-section (2) (d). See s. 42 and note. By the Madras and Bombay Armies Act, 1893, it is provided that, for the purposes of this section, the Commander-in-Chief of the forces in India shall be deemed to be the commander-in-chief in each presidency.

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180-181.

Sub-section (2) (h). Under 23 & 24 Vict. c. 100, it is illegal to enlist European forces for service in India only. This sub-section permits Europeans to be enlisted for medical or other special service in manner from time to time provided by the Governor-General.

It will be recollected that under s. 190 (21), "India" includes the territories in India under the dominion of any native prince or princes as well as the territories the government of which is vested in Her Majesty.

181. (1.) The provisions of this Act with respect to enlistment shall not apply to a person enlisted or enrolled in any of Her Majesty's auxiliary forces, except so far as such person enlists or attempts to enlist in the regular forces, and except so far as the said provisions may be applied by any other Act.

Modification of Act with respect to auxiliary forces.

(2.) The provisions of this Act shall apply to the permanent staff of the auxiliary forces who are not otherwise part of the regular forces, in like manner as if such permanent staff were part of the regular forces.

(3.) The provisions of this Act with respect to billeting and impressment of carriages shall apply to Her Majesty's auxiliary forces when subject to military law, in like manner as if they were part of the regular forces, subject to the following modification :

(4.) An order issued and signed as a route or an order signed by the officer commanding the battalion of militia, or the battalion or corps of yeomanry or volunteers, shall be substituted for a route—

- (a.) In the case of any militiaman attending for his preliminary training ; and
- (b.) In the case of any militia officer, non-commissioned officer, or man, assembled for training and exercise at the place in the United Kingdom appointed by Her Majesty in that behalf ; and

- Part V. (c.) In the case of any militia officer, non-commissioned
s. 181: officer, or man, embodied under an order of Her Majesty, who has joined his corps at the place appointed for his assembling ; and
- (d.) In the case of any officer, non-commissioned officer or man of the yeomanry or volunteers attending at the place at which his corps is required to assemble ;

and an order to billet such officer, non-commissioned officer, or man, purporting to be signed in manner required by this Act in the case of a route or by the officer commanding a battalion of militia, or a battalion or corps of yeomanry or volunteers, as the case may be, shall be evidence, until the contrary is proved, of the order being issued in accordance with this Act, and when delivered to an officer, non-commissioned officer, or man of the militia, yeomanry, or volunteers, shall be a sufficient authority to such officer, non-commissioned officer, or man, to demand billets, and when produced by an officer, non-commissioned officer, or man to a constable shall be conclusive evidence to such constable of the authority of the officer, non-commissioned officer, or man producing the same to demand billets in accordance with the order.

(5.) The competence or liability of an officer of the auxiliary forces to be nominated or elected to, or to hold the office of sheriff, mayor, or alderman, or an office in a municipal corporation, shall not be affected by reason of the battalion or corps to which he belongs being assembled for annual training, at the time of such nomination or election, or during the time of his tenure of office.

(6.) When a member of the volunteers, being a non-commissioned officer or private, is subject to military law, dismissal may be awarded to him as a punishment, in the event of his committing any offence triable by court-martial or punishable by a commanding officer under this Act.

Sub-section (1). *Except so far as such person enlists.* For the offence of fraudulent enlistment, see s. 13; for that of unauthorised enlistment, see ss. 33 and 99, and Ch. XI, para. 53. Part V.
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181-182.

Except so far as the said provisions. This refers to the application of the procedure for enlistment to the enlistment of militiamen by the Militia Act, 1882 (45 & 46 Vict. c. 49, s. 9).

Sub-section (3). *Billeting and impressment of carriages.* See Part III of the Act.

Sub-section (5). If a sheriff is an officer of the militia at the time when his corps is embodied, he is discharged from personally performing the office of sheriff, and the under sheriff is to perform the duty (Militia Act, 1882, s. 40).

The seat of a member of Parliament is not vacated by the acceptance of a commission in the militia, yeomanry, or volunteers; and a person in the militia is not liable to any punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time he is returning from such election. A person in the militia cannot be compelled to serve as a constable or other peace officer, or as a parish officer (Militia Act, 1882, ss. 38-41).

182. The provisions of this Act shall apply to a warrant officer not holding an honorary commission in like manner as if he were a non-commissioned officer, subject nevertheless (in addition to the modifications for a non-commissioned officer) to the following modifications : Special provisions as to warrant officers.

(1.) He shall not be punished by his commanding officer nor tried by regimental court-martial, nor sentenced by a district court-martial to any punishment not in this section mentioned ; and

(2.) He may be sentenced—

(a) by a district court-martial to such forfeitures, fines, and stoppages as are allowed by this Act, and, either in addition to or in substitution for any such punishment, to be dismissed from the service, or to be suspended from rank and pay and allowances, for any period stated by the court-martial, or to be reduced to the bottom or any other place in the list of the rank which he holds, or to be reduced to an inferior class of warrant officer (if any) or, if he was originally

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182-183.

enlisted as a soldier, but not otherwise, to be reduced to a lower grade, or to the ranks ; or

(b) by any court-martial having power to try him, other than a district court-martial, to any punishment which under this section, a district court-martial has power to award, either in addition to or in substitution for any other punishment.

3.) A warrant officer reduced to the ranks, or remanded to regimental duty in the rank of private, shall not be required to serve in the ranks as a soldier ;

(4.) The president of a court-martial for the trial of a warrant officer shall in no case be under the rank of captain.

Not holding an honorary commission. Warrant officers holding honorary commissions, are officers within the meaning of the Act ; s. 190 (4), (5). This section makes the Act apply to warrant officers who do not hold such commission as if they were non-commissioned officers. Consequently, subject to the modifications in this and the next section, the word "soldier" throughout the Act includes a warrant officer not holding an honorary commission. See s. 190 (6). In this and the next section, the commanding officer is the commanding officer as defined by Rule 128. See Q.R., Sect. VI, para. 15.

Sub-section (2). A district court-martial can only sentence a warrant officer to the punishments mentioned in para. (a) ; but a general or field general court-martial can award any of the punishments so mentioned, either in addition to, or in substitution for, any punishment which they can award under their ordinary powers.

Special provisions as to non-commissioned officer.

183. In the application of this Act to a non-commissioned officer, the following modifications shall apply :

(1.) The obligation on a commanding officer to deal summarily with a soldier charged with drunkenness shall not apply to a non-commissioned officer charged with drunkenness :

(2.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, may

reduce any non-commissioned officer to any lower grade or to the ranks : Part V.
s. 183.

- (3.) A non-commissioned officer may be reduced by the sentence of a court-martial to any lower grade or to the ranks, either in addition to or without any other punishment, in respect of an offence :
- (4.) A non-commissioned officer sentenced by court-martial to penal servitude or imprisonment shall be deemed to be reduced to the ranks :

Provided that—

- (a.) An army schoolmaster shall not be liable to be reduced to the ranks (unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer), but may nevertheless be sentenced by a court-martial to penal servitude or imprisonment, or to a lower grade of pay, or to be dismissed, and if sentenced to penal servitude or imprisonment, shall be deemed to be dismissed but
- (b.) The Commander-in-Chief, and in India the Commander-in-Chief of the forces in India, may dismiss any army schoolmaster ;
- (c.) A soldier being an acting non-commissioned officer by virtue of his employment either in a superior rank or in an appointment may be ordered by his commanding officer either for an offence or otherwise to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

Non-commissioned officer. See definition in s. 190 (5), which includes acting non-commissioned officer.

Sub-section (1). *Obligation.* See s. 46 (3).

Sub-sections (2), (3), and proviso (c). A non-commissioned officer can only be reduced by the Commander-in-Chief or by sentence of a court-martial; but inasmuch as the word "non-

Part V. commissioned officer" includes acting non-commissioned officer (see s. 190 (5)), it is provided by proviso (c) that a soldier having acting rank only may be ordered by his commanding officer, for an offence or for any other cause, to revert to his permanent grade, or, if he has no permanent grade as non-commissioned officer, to the ranks. As to reduction of non-commissioned officer convicted by the civil power, see Q.R., Sect. VI., para. 56.

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183-184.

Sub-section (3) must be read in conjunction with the Queen's Regulations, Sect. VII, defining what are ranks. Acting rank is a matter to be entirely dealt with by the commanding officer, and not being legally a rank under the Queen's Regulations is not cognisable in the sentence of a court-martial. Therefore a sentence of reduction from or to acting rank, *e.g.*, from or to the rank of lance-serjeant or lance-corporal, is inoperative. But a lance-corporal, being a non-commissioned officer, loses his acting rank under sub-section (4) upon being sentenced to imprisonment.

Sub-section (4). Although under this sub-section a non-commissioned officer sentenced to penal servitude or imprisonment is *ipso facto* reduced to the ranks, it is desirable to specify such reduction in the sentence.

Proviso (a). This proviso allows a schoolmaster to be sentenced to penal servitude, or imprisonment, although he cannot be reduced to the ranks, unless he has been transferred from the ranks, in which case he may be reduced to the rank which he held at the date of transfer. See generally as to courts-martial on schoolmasters, Q.R., Sect. VI, para. 44. It does not of course prevent the infliction of any less punishment than imprisonment.

Special provisions as to application of Act to persons not belonging to Her Majesty's forces.

184. In the application of this Act to persons who do not belong to Her Majesty's forces, the following modifications shall be made :

(1.) Where an offence has been committed by any person subject to military law who does not belong to Her Majesty's forces, such person may be tried by any description of court-martial other than a regimental court-martial, convened by an officer authorised to convene such description of court-martial, within the limits of whose command the offender may for the time being be, and may be tried and, on conviction, dealt with and punished accordingly.

(2.) Any person subject to military law who does not belong to Her Majesty's forces shall, for the purposes of

this Act relating to offences, be deemed to be under the command of the commanding officer of the corps, or portion of a corps (if any), to which he is attached, and if he is not attached to any corps, or portion of a corps, under the command of any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be, or of any other prescribed officer, or if no such officer is named or prescribed, under the command of the said general or other officer commanding, but such person shall not be liable to be punished by a commanding officer or by a regimental court-martial.

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ss.
184-186.

Provided that a general or other officer commanding shall not place a person under the command of an officer of rank inferior to the official rank of such person if there is present at the place where such person is any officer of higher rank under whose command he can be placed.

This section provides for the trial by court-martial of a person who does not belong to either the regular or the auxiliary forces.

Sub-section (2). This sub-section has reference to certain offences, see ss. 7 (4), 14 (2), 15 (3), and also to the investigation by the commanding officer, see ss. 45 and 46; see also s. 49 (field general court-martial), and Rule 128.

Saving Provisions.

185. All jurisdiction and powers of a Secretary of State under this Act with respect to military convicts or military prisoners, or to prisons other than military prisons, shall in Ireland be vested in the General Prisons Board, and shall be exercised by that Board in the manner and subject to the regulations in and under which the jurisdiction and powers of that Board are exercised under the General Prisons (Ireland) Act, 1877, and the provisions of this Act with respect to the orders and regulations of the Secretary of State shall apply to the orders and regulations of such Board.

Special provisions as to prisoners and prisons in Ireland.

40 & 41 Vict.
c. 49.

186. Nothing in this Act shall affect the application of

(M.L.)

Part V. the Naval Discipline Act, or any Order in Council made thereunder, to any of Her Majesty's forces when embarked on board any ship commissioned by Her Majesty, and the auxiliary forces shall be deemed to be part of Her Majesty's forces within the meaning of that Act.

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186-187.
Naval Discipline Act, as to forces when on board Her Majesty's ships.

The provision of the Naval Discipline Act here referred to is s. 88, and is as follows:—

“Her Majesty's land forces when embarked on board any of Her Majesty's ships shall be subject to the provisions of this Act to such extent and under such regulations as Her Majesty, her heirs and successors by any Order or Orders in Council shall at any time or times direct.”

The Queen's Regulations, Sect. XVII, enjoin officers to observe the Order in Council which is printed below at p. 775.

Definitions.

Application of Act to Channel Islands and Isle of Man.

187. This Act shall apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom, subject to the following modifications :

- (1.) The provisions of this Act relating to billeting and the impressment of casualties shall not extend to the Channel Islands and the Isle of Man :
- (2.) For the purposes of the provisions of this Act relating to the execution of sentences of penal servitude or imprisonment, and to prisons, the Channel Islands and the Isle of Man shall be deemed to be colonies, and any sentence of penal servitude or imprisonment passed in any of those islands shall be deemed to have been passed in a colony :
- (3.) For the purposes of the provisions of this Act relating to the auxiliary forces the Channel Islands shall be deemed to be colonies :
- (4.) For the purposes of the provisions of this Act relating to the militia the Isle of Man shall be deemed to be a colony.

Sub-section (2). The effect of this provision is to require soldiers sentenced to penal servitude or imprisonment in the Channel Islands or Isle of Man to be brought to the United Kingdom under the same circumstances as when they are sentenced in a colony. See section 131 (2).

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ss.
187-189.

Sub-section (4). The volunteers in the Isle of Man are subject to the same law as the volunteers in Great Britain.

188. Where a person subject to military law is on board a ship, this Act shall apply until he arrives at the port of disembarkation in like manner as if he and the officers in command of him were on land at the place at which he embarked on board the said ship, subject to this proviso, that, if he is tried and sentenced while so on board ship any finding and sentence so far as not confirmed and executed on board ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

Application
of Act to
ships.

This section provides for the trial of military offenders on board ship, or for offences committed on board ship. Under it the soldier will carry with him on board ship the military law to which he was subject at the time when he embarked. Consequently an officer holding a warrant to convene courts-martial at the place of such embarkation would be able to convene a court-martial on board ship. On the other hand, if a man is tried on board ship, the sentence can be confirmed and executed at the place of disembarkation, by the officer who would have had authority to confirm it if the court-martial had been convened and the trial held at that place.

As to troops embarked on board Her Majesty's ships, see s. 186 and note.

189. (1.) In this Act, if not inconsistent with the context, the expression "on active service" as applied to a person subject to military law means whenever he is attached to or forms part of a force which is engaged in operations against the enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country. -

Interpreta-
tion of
term
"active
service."

(2.) Where the governor of a colony in which any of

Part V. Her Majesty's forces are serving, 'or if the forces are
s. 189. serving out of Her Majesty's dominions, the general officer commanding such forces, declares at any time or times that, by reason of the imminence of active service, or of the recent existence of active service, it is necessary for the public service that the forces in the colony or under his command, as the case may be, should be temporarily subject to this Act, as if they were on active service, then, on the publication in general orders of any such declaration, the forces to which the declaration applies shall be deemed to be on active service for the period mentioned in the declaration, so that the period mentioned in any one declaration do not exceed three months from the date thereof.

(3.) If at any time during the said period the governor or general officer for the time being is of opinion that the necessity continues he may from time to time renew such declaration for another period not exceeding three months, and such renewal shall be published and have effect as the original declaration, and if he is of opinion that the said necessity has ceased, he shall state such opinion, and on the publication in general orders of such statement, the forces to which the declaration applies shall cease to be deemed to be on active service.

(4.) Every such declaration, renewal of declaration, and statement by the governor of a colony shall be made by proclamation published in the official gazette of the colony, and it shall be the duty of every governor or general officer making a declaration or renewal of a declaration under this section, if he has the means of direct telegraphic communication with a Secretary of State, to obtain the previous consent of the Secretary of State to such declaration or renewal, and in any other case to report the same with the utmost practicable speed to the Secretary of State.

(5.) The Secretary of State may, if he thinks fit, annul

a declaration or renewal purporting to be made in pursuance of this section, without prejudice to anything done by virtue thereof before the date at which the annulment takes effect, and until that date any such declaration or renewal shall be deemed to have been duly made in accordance with this section, and shall have full effect.

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189-190.

It will be observed that the power given by this section to anticipate, or prolong as it were, the period of active service is given to the Governor in a colony, and to the General when out of the Queen's dominions. The declaration of the Governor must be by proclamation in the official gazette, but it does not take effect as regards the forces until the declaration has been published in general orders. On such publication the troops will be deemed to be on active service, although active service, as defined by the Act, has not actually begun or has ended.

For definition of colony, see s. 190 (23).

190. In this Act, if not inconsistent with the context the following expressions have the meanings hereinafter respectively assigned to them ; that is to say, Interpretation of terms.

- (1.) The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State.
- (2.) The expression "Lord Lieutenant of Ireland" includes the lords justices or other chief governor or governors of Ireland ;
- (3.) The expression "Commander-in-Chief" means the field-marshal or other officer commanding in chief Her Majesty's forces for the time being ;
- (4.) The expression "officer" means an officer commissioned or in pay as an officer in Her Majesty's forces, or any arm, branch or part thereof ; it also includes a person who, by virtue of his commission, is appointed to any department or corps of Her Majesty's forces, or of any arm, branch, or part thereof ; it also includes a person, whether retired or not, who, by virtue of his commission or otherwise, is legally entitled to the style and rank of an officer of Her Majesty's

Part V.

s. 190.

said forces, or of any arm, branch, or part thereof :

Warrant and other officers holding honorary commissions are officers within the meaning of this Act subject to the exceptions in this Act mentioned :

- (5.) The expression "non-commissioned officer" includes an acting non-commissioned officer, and includes an army schoolmaster when not a warrant officer, but save as in this Act mentioned does not include a warrant officer not holding an honorary commission :
- (6.) The expression "soldier" does not include an officer as defined by this Act, but, with the modifications in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer not having an honorary commission and a non-commissioned officer, and every person subject to military law during the time that he is so subject :
- (7.) The expression "superior officer" when used in relation to a soldier, includes a warrant officer not holding an honorary commission, and also includes a non-commissioned officer as above defined :
- (8.) The expressions "regular forces" and "Her Majesty's regular forces" mean officers and soldiers who by their commission, terms of enlistment, or otherwise, are liable to render continuously for a term military service to Her Majesty in any part of the world, including, subject to the modifications in this Act mentioned, the Royal Marines and Her Majesty's Indian forces, and the Royal Malta Fencible Artillery, and subject to this qualification that when the reserve forces are subject to military law such forces become

during the period of their being so subject part. **Part V.**
of the regular forces : **s. 190.**

The Royal Malta Fencible Artillery has been styled the Royal Malta Artillery since 1889.

- (9.) The expression "reserve forces" means the army reserve force and the militia reserve force :

* * * * *

Sub-sections (10) and (11) are repealed by the Reserve Forces Act, 1882 (45 & 46 Vict., c. 48), and that Act enacts (s. 28) that in the Army Act the expressions "army reserve force" and "militia reserve force" shall respectively mean the army reserve and militia reserve under the Reserve Forces Act, 1882.

- (12.) The expression "auxiliary forces" means the militia, the yeomanry, and the volunteers :

- (13.) The expression "militia" includes the general and the local militia :

- (14.) The expression "volunteers and volunteer forces" includes the Honourable Artillery Company of London :

- (15.) The expression "corps"—

- (A) In the case of Her Majesty's regular forces—

- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purpose of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the regular forces, and in either case with or without the whole or any part of the permanent staff of any of the auxiliary forces not included in such military body ; and
- (ii.) Means the Royal Marine forces, in this Act referred to as the Royal Marines ; and also
- (iii.) Means the Army Service Corps, the Army

Part V.**s. 110.**

Hospital Corps (a), and any other portion of Her Majesty's regular forces, by whatever name called, which is declared by Royal Warrant to be a corps for the purposes of this Act ; and also

- (iv.) Means any other portion of Her Majesty's regular forces employed on any service and not attached to any corps as above defined ;
 - (v.) And any reference in Part II of this Act to a corps of the regular forces shall be deemed to refer to any such military body as is hereinbefore defined to form a corps ; and
- (B) In the case of Her Majesty's auxiliary forces—
- (i.) Means any such military body, whether known as a territorial regiment or by any different name, as may be from time to time declared by Royal Warrant to be a corps for the purposes of this Act, and is a body formed by Her Majesty, and either consisting of associated battalions of the regular and auxiliary forces, or consisting wholly of a battalion or battalions of the auxiliary forces, and either inclusive or exclusive of the whole or any part of the permanent staff of any part of the auxiliary forces ; and
 - (ii.) Means any other portion of Her Majesty's auxiliary forces employed in any service, and not attached to any corps as above defined :
- (16.) The expression "battalion," in the application of this Act to cavalry, artillery, or engineers, shall be construed to mean regiment, brigade, or other body into which Her Majesty may have been pleased to divide such cavalry, artillery, or engineers :

- (17.) The expression "regimental" means connected with a corps, or with any battalion or other subdivision of a corps : **Part V.**
§. 180.
- (18.) The expression "military decoration" means any medal, clasp, good-conduct badge, or decoration :
- (19.) The expression "military reward" means any gratuity or annuity for long service or good conduct ; it also includes any good-conduct pay or pension and any other military pecuniary reward :
- (20.) The expression "enemy" includes all armed mutineers, armed rebels, armed rioters, and pirates :
- (21.) The expression "India" means British India, together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India ; and the expression "British India" means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India :
- (22.) The expression "native of India," means a person triable and punishable under Indian military law as defined by this Act :
- (23.) The expression "colony" means any part of Her Majesty's dominions exclusive of the British Islands and of British India, and includes Cyprus, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony :

Part V.
s 195.

- (24.) The expression "foreign country" means any place which is not situate in the United Kingdom, a colony, or India, as above defined, and is not on the high seas :
- (25.) The expression "beyond the seas" means out of the United Kingdom, the Channel Islands, and Isle of Man ; and the expression "station beyond the seas" includes any place where any of Her Majesty's forces are serving out of the United Kingdom, the Channel Islands, and Isle of Man :
- (26.) The expression "governor-general" in its application to India means the Governor-General of India in Council :
- (27.) The expression "governor" as respects the presidency of Bengal means the Governor-General of India in Council, and as respects the presidencies of Madras and Bombay means the Governor in Council of the presidency, and in its application to a colony includes the lieutenant-governor or other officer administering the government of the colony :
- (28.) The expressions "oath" and "swear," and other expressions relating thereto, include affirmation or declaration, affirm or declare, and expressions relating thereto, in cases where an affirmation or declaration is by law allowed instead of an oath :
- (29.) The expression "superior court" in the United Kingdom, means Her Majesty's High Court of Justice in England, the Court of Session in Scotland, and Her Majesty's High Court of Justice at Dublin :
- (30.) The expression "supreme court" means, as regards India, any high court or any chief court ; and the expression "court of superior jurisdiction," as

regards a colony, means a court exercising in that colony the like authority as the High Court of Justice in England :

Part V.
s. 190.

- (31.) The expression "civil court" means, with respect to any crime or offence, a court of ordinary criminal jurisdiction, and includes a court of summary jurisdiction :
- (32.) The expression "prescribed" means prescribed by any rules of procedure made in pursuance of this Act :
- (33.) The expression "misdemeanor," as far as regards Scotland, means a crime or offence, and so far as regards India means a crime punishable by fine and rigorous or simple imprisonment at the discretion of the court :
- (34.) The expression "Summary Jurisdiction Acts"—
- (a.) As regards England has the same meaning as in the Summary Jurisdiction Act, 1879 : "Summary Jurisdiction Acts."
42 & 43 Vict.
c. 49.
 - (b.) As regards Scotland, means the Summary Procedure Act, 1864, and any Acts amending the same ; and 27 & 28 Vict.
c. 53.
 - (c.) As regards Ireland, means within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district ; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same : 14 & 15 Vict.
c. 93.
- (35.) The expression "court of summary jurisdiction"—
- (a.) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879 ; and "Court of summary jurisdiction."
 - (b.) As regards Ireland, means any justice or justices of the peace, police magistrate, stipendiary or other magistrate, or officer by whatever name called, to whom jurisdiction

Part V.

s. 120.

27 & 28 Vict.
c. 53.

is given by the Summary Jurisdiction Acts or any Acts therein referred to ; and

- (c.) As regards Scotland, means the sheriff or sheriff substitute, or any two justices of the peace sitting in open court ; or any magistrate or magistrates to whom jurisdiction is given by the Summary Procedure (Scotland) Act, 1864 ; and
- (d.) As regards India, a colony, the Channel Islands, and Isle of Man, means the court, justices, or magistrates, who exercise jurisdiction in the like cases to those in which the Summary Jurisdiction Acts are applicable :
- (36.) The expression "court of law" includes a court of summary jurisdiction :
- (37.) The expression "county court judge" includes—
 - (a.) In the case of Scotland, the sheriff or sheriff substitute ; and
 - (b.) In the case of Ireland, the judge of the Civil Bill Court :
- (38.) The expression "constable" includes a high constable and a commissioner, inspector, or other officer of police :
- (39.) The expression "police authority" means the commissioner, commissioners, justices, watch committee, or other authority having the control of a police force :
- (40.) The expression "horse" includes a mule, and the provisions of this Act shall apply to any beast of whatever description used for burden or draught, or for carrying persons, in like manner as if such beast were included in the expression "horse."

(4.) *Officer.* This includes half-pay and every other description of officer, though not subject to military law.

(6.) *Soldier.* This expression practically includes all persons subject to military law other than officers.

Modifications. See ss. 182, 183.

Part V.

(8.) *Regular Forces.* This definition includes the marines. The distinction between the regular and other forces is that, as a rule, the regular forces are liable to serve continuously in any part of the world.

s. 190.

(15.) *Corps.* As the corps is the unit for the purposes of enlistment and some other purposes under the Act, a power is given to Her Majesty by warrant to declare any portion of the forces to be a corps for the purposes of the Act, but even in cases where a warrant has not been issued, a portion of the regular or auxiliary forces employed on any service, and not attached to any corps as defined by the Act or such warrant, becomes a corps for the purposes of the Act. See the Warrant now in force, and chapter XI, paras. 4-6.

(21.) *India.* It will be observed that "India," for the purposes of the Act, includes the dominions of Indian native princes, as well as "British India"—that is to say, all territories and places in H.M.'s dominions governed through the Governor-General of India.

(23.) *Colony.* India is not treated as a colony for the purposes of the Act.

The reference to a central legislature refers to such a case as Canada, where the Dominion parliament assembled at Ottawa is the central legislature, and the provincial parliaments for the provinces of Quebec, Ontario, &c., are local legislatures. Under the definition, the whole of Canada being under one central legislature will be one colony, and the provinces of Quebec, Ontario, &c., will be parts of that colony, and not separate colonies, for the purposes of the Act.

(24.) *Foreign country.* This includes the whole world, with the exception of the United Kingdom, India, and the colonies.

(25.) *Beyond the seas.* It will be observed that the Channel Islands and the Isle of Man, though for certain purposes treated as colonies (see s. 187), are treated as not being beyond the seas.

(35.) *Court of Summary Jurisdiction.* The expression "summary conviction" is not defined by the Act, but means a conviction by a court of summary jurisdiction as defined by this section, and does not refer to the summary award of punishment by a commanding officer or to any other military proceeding.

By virtue of the definition in the Interpretation Act, 1889, a "court of summary jurisdiction" means, in England, a police or stipendiary magistrate, and also any justice of the peace, including a mayor, who is *ex officio* a justice; but for hearing a case the court must consist of two justices, or of one police or stipendiary magistrate.

The expression "authorised prison" is not defined by this sec-

Part V tion, but is defined, as regards military convicts, by s. 62, and as
— regards military prisoners, by s. 65.

ss. It may be observed that under the Interpretation Act, 1889
190-191 (52 & 53 Vict., c. 63), in the construction of every Act of Parliament, masculine words include the feminine, the plural includes the singular, and the singular includes the plural; the word "month" means a calendar month, and "oath," "affidavit," and "swear," include affirmation, declaration, and affirm or declare. But this enactment does not apply to documents not Acts of Parliament, and therefore in any such document, *e.g.*, a warrant, "month" will mean lunar month, and "oath" will not include affirmation, &c.

Throughout the Act a year means twelve calendar months, and may be held to commence on any day in any month.

PART VI.

COMMENCEMENT AND APPLICATION OF ACT AND REPEAL.

Part VI (ss. 191-193) and the Fifth Schedule were repealed by the Statute Law Revision (No. (2)) Act, 1893, 56 & 57 Vict., c. 54.

FIRST SCHEDULE.

s. 96.

Form of Oath to be taken by a Master whose Apprentice has absconded, and of Justice's Certificate annexed.

I, A.B., of do make oath, that I am by trade
a , and that was bound
to serve as an apprentice to me in the said trade, by indenture
dated the day of for the term of
years ; and that the said did on or about the
day of abscond and quit my service without
my consent ; and that to the best of my knowledge and belief
the said is aged about years. Witness
my hand at , the day of , 18 .
(Signed) A.B.

| | | |
|--|---|--|
| I hereby certify that the foregoing affidavit was sworn before me at , this day of , 18 . | } | (Signed) C.D., Justice of the Peace for . |
|--|---|--|

Form of Oath to be taken by a Master whose Indentured Labourer in India or a Colony has absconded, and of Justice's Certificate annexed.

I, , of , do make oath that
 was bound to me to serve as an indentured
labourer by indenture dated the day of for
the term of years, and that the said did on
or about the day of abscond and quit my
service without my consent. Witness my hand at
the day of , 18 .

(Signed) A.B.

I hereby certify, &c. [as for apprentice].

ss.
106, 108.

SECOND SCHEDULE.

BILLETING.

PART I.

Accommodation to be furnished by Keeper of Victualling House.

A keeper of a victualling house on whom any officer, soldier, or horse is billeted—

- (1) Shall furnish the officer and soldier with lodging and attendance; and
- (2.) Shall, if required by the soldier, furnish him for every day of the march and for not more than two days, if the soldier is halted at an intermediate place on the march for more than two days, and on the day of arrival at the place of final destination, with one hot meal on each day, the meal to consist of such quantities of diet and small beer as may be from time to time fixed by Her Majesty's Regulations, not exceeding one pound and a quarter of meat previous to being dressed, one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, and vinegar, salt, and pepper, and with a breakfast consisting of half a pound of bread and a cup of tea; and
- (3.) When the soldier is not so entitled to be furnished with a hot meal, shall furnish the soldier with candles, vinegar, and salt, and allow him the use of fire, and the necessary utensils for dressing, and eating his meat; and
- (4.) Shall furnish stable room and ten pounds of oats, twelve pounds of hay, and eight pounds of straw on every day for each horse.

PART II.

Regulations as to Billets.

- (1.) When the troops are on the march the billets given shall, except in case of necessity or of an order of a

justice of the peace, be upon victualling houses in or within one mile from the place mentioned in the route :

- (2.) Care shall always be taken that the billets be made out to the less distant victualling houses in which suitable accommodation can be found before billets are made out for the more distant victualling houses :
 - (3.) Except in case of necessity, where horses are billeted each man and his horse shall be billeted on the same victualling house :
 - (4.) Except in case of necessity, one soldier at least shall be billeted where there are one or two horses, and two soldiers at least where there are four horses, and so in proportion for a greater number :
 - (5.) Except in case of necessity, a soldier and his horse shall not be billeted at a greater distance from each other than one hundred yards :
 - (6.) When any soldiers with their horses are billeted upon the keeper of a victualling house who has no stables, on the written requisition of the commanding officer present the constable shall billet the soldiers and their horses, or the horses only, on the keeper of some other victualling house who has stables, and a court of summary jurisdiction upon complaint by the keeper of the last-mentioned victualling house may order a proper allowance to be paid to him by the keeper of the victualling house relieved :
 - (7.) An officer demanding billets may allot the billets among the soldiers under his command and their horses as he thinks most expedient for the public service, and may from time to time vary such allotment :
 - (8.) The commanding officer may, where it is practicable, require that not less than two men shall be billeted in one house.
-

s. 113,

THIRD SCHEDULE,

IMPRESSMENT OF CARRIAGES.

TABLE OF RATES OF PAYMENT FOR CARRIAGES AND ANIMALS.

| Carriages and Animals. | Rate per Mile. |
|--|----------------|
| <i>In Great Britain.</i> | |
| A waggon with four or more horses, or a wain with six oxen, or four oxen and two horses. | One shilling. |
| A waggon with narrow wheels, or a cart with four horses, carrying not less than fifteen hundredweight. | Ninepence. |
| Any other cart or carriage, with less than four horses, and not carrying fifteen hundredweight. | Sixpence. |
| <i>In Ireland.</i> | |
| For every hundredweight loaded on any wheeled vehicle. | One halfpenny. |

The mileage when reckoned for the purposes of payment shall include the distance from home to the place of starting and the distance home from the place of discharge.

Regulations as to Carriages and Animals.

(1.) Where the whole distance for which a carriage is furnished is under one mile the payment shall be for a full mile.

(2.) In Ireland, the minimum sum payable for a car shall be threepence, and for a dray, sixpence per mile.

(3.) In Great Britain, when the day's march exceeds fifteen miles, the justice granting his warrant may fix a further reasonable compensation for every mile travelled, not exceeding, in respect of each mile, the rate of hire authorised to be charged by this Act; when any such additional compensation

is granted, the justice shall insert in his own hand in the warrant the amount thereof.

(4.) In Ireland the payment shall be at the same rate for each hundredweight in excess of the amount which the carriage is liable under this schedule to carry.

(5.) A carriage shall not be required to travel more than twenty-five miles.

(6.) A carriage shall not, except in case of pressing emergency, be required to travel more than one day's march prescribed in the route.

(7.) In Great Britain a carriage shall not be required to carry more than thirty hundredweight.

(8.) In Ireland a carriage shall not be required to carry, if a car, more than six hundredweight, and if a dray more than twelve hundredweight.

(9.) The load for each carriage shall, if required, at the expense of the owner of the carriage, and if the same can be done within a reasonable time without hindrance to Her Majesty's service, be weighed before it is placed in the carriage.

s. 154.

FOURTH SCHEDULE.

FORM OF DESCRIPTIVE RETURN.

DESCRIPTIVE RETURN of who* at
 on the day of , and was committed to con-
 finement at on the day of as a
 deserter [or absentee without leave] from the Bn.
 of the Regiment of

* After the word "who," to be inserted either the words "was apprehended," or "surrendered himself," as the case may be.

| | | | | | | |
|--|---|---|---|---|---|---------------|
| Age | - | - | - | - | - | |
| Height | - | - | - | - | - | Feet. Inches. |
| Complexion | - | - | - | - | - | |
| Hair | - | - | - | - | - | |
| Eyes | - | - | - | - | - | |
| Marks | - | - | - | - | - | |
| In uniform or plain clothes | - | - | - | - | - | |
| Probable date and place of attestation | - | - | - | - | - | |
| Probable date of desertion or beginning of absence, and from what place | - | - | - | - | - | |
| Name, occupation, and address of the person by whom or through whose means the deserter [or absentee without leave] was apprehended and secured.† | - | - | - | - | - | |
| Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner and upon what grounds. The fullest possible details to be given. | - | - | - | - | - | |

† It is important for the public service, and for the interest of the deserter or absentee without leave, that this part of the return should be accurately filled up, and the details should be inserted by the justice in his own handwriting or, under his direction, by his clerk.

I do hereby certify that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he*

the before-mentioned corps, and I recommend† for a reward of s.

____ Signature } of committing magis-
 ____ Residence } trate.
 ____ Post Town }
 ____ Signature of prisoner.
 ____ Signature of informant.

Or where the prisoner confessed, and evidence of the truth or falsehood of such confession is not then forthcoming :

I hereby certify that the above-named prisoner confessed to the circumstances above stated, but that evidence of the truth or falsehood of such confession is not forthcoming, and that the case was adjourned until the day of for the purpose of obtaining such evidence from a Secretary of State.

____ Signature.
 ____ Residence.
 ____ Post Town.

* Insert *is or is not a deserter or absentee without leave from or belongs or does not belong to*, as the case may be.

† The justice will insert the name of the person to whom the reward is due, and the amount [5s., 10s., 15s., or 20s.] which, in his opinion, should be granted in this particular case.

FIFTH SCHEDULE.

ACTS REPEALED.

[Rep. Stat. Law Rev. (No. (2)) Act, 1893.]

I RULES OF PROCEDURE, 1893.

PART I.--ARREST AND TRIAL.

Arrest.

1. Report of delay of trial under Army Act, s. 45.

Power of Commanding Officer.

2. Duty of commanding officer as to investigation of charge for offence.
3. Hearing of charge.
4. Disposal of charge by commanding officer.
5. Procedure and summary of evidence on remand for trial by general or district court-martial.
6. Summary award of punishment by commanding officer.
7. Right of trial by court-martial in lieu of summary award.
8. Procedure on charge against officer.

Framing Charges.

9. Charge-sheet and charge.
10. Commencement of charge-sheet.
11. Contents of charge.
12. Validity of charge-sheet.

Prisoner's Preparation for Defence.

13. Opportunity for prisoner to prepare defence.
14. Information of charge and delivery of list of officers to prisoner.
15. Joint trial of prisoners.

Convening of Court-Martial.

16. Convening of regimental court-martial.
17. Procedure of officer on convening court-martial.
18. Adjournment for insufficient number of officers.
19. Ineligibility and disqualification of officers for court-martial.

20. Corps of members of court-martial.
21. Rank of members of court-martial in certain cases.

Procedure at Trial.—Constitution of Court.

22. Inquiry by court as to legal constitution.
23. Inquiry by court as to amenability of prisoner, and validity of charge.

Procedure at Trial.—Challenge and Swearing.

24. Appearance of prosecutor and prisoner.
25. Proceedings for challenge of members of court.
26. Swearing of members.
27. Swearing of judge-advocate and other officers.
28. Substitution of solemn declaration for oath.
29. Form of oath in case of trial of several prisoners.
30. Swearing of person according to the form of his religion.

Prosecution, Defence, and Summing up.

31. Arraignment of prisoner.
32. Objection by prisoner to charge.
33. Amendment of charge.
34. Special plea to the jurisdiction.
35. General plea of "Guilty" or "Not Guilty."
36. Plea in bar.
37. Procedure after plea of "Guilty."
38. Withdrawal of plea of "Not Guilty."
39. Plea of "Not Guilty" and case for the prosecution.
40. Close of case for the prosecution and procedure for defence where prisoner does not call witnesses.
41. Defence where prisoner calls witnesses.
42. Summing-up by judge-advocate.

Finding and Sentence.

43. Consideration of finding.
44. Form and record of finding.
45. Procedure on acquittal.
46. Procedure on conviction.
47. Mode of forfeiting seniority of rank of officer.
48. Sentence.
49. Recommendation to mercy.
50. Signing and transmission of proceedings.

Confirmation and Revision.

51. Procedure of confirming officer.
52. Revision,

53. Promulgation.
54. Mitigation of sentence on partial confirmation.
55. Confirmation of finding on alternative charges.
56. Confirmation notwithstanding informality in or excess of punishment.

Insanity.

57. Provisions as to finding of insanity and custody of insane person.

General Provisions as to Proceedings of Court.

58. Seating of members.
59. Responsibility of president.
60. Power of court over address of prosecutor and prisoner.
61. Procedure on trial of prisoners together.
62. Separate charge-sheets.
63. Sitting in closed court.
64. Time for trial.
65. Continuity of trial and adjournment of court.
66. Suspension of trial.
67. Proceeding on death or illness of prisoner.
68. Presence throughout of all members of court.
69. Taking of opinions of members of court.
70. Procedure on incidental question.
71. Swearing of court to try several prisoners.
72. Swearing of interpreter and shorthand writer.

General Provisions as to Witnesses and Evidence.

73. Evidence to be relevant and according to rules in English courts.
74. Judicial notice.
75. Calling of all prosecutor's witnesses.
76. Calling of witness whose evidence is not contained in summary or abstract.
77. List of prisoner's witnesses.
78. Procuring attendance of witnesses.
79. Adjournment of court for non-attendance of witnesses.
80. Withdrawal of witnesses from court.
81. Swearing of witnesses.
82. Mode of questioning witnesses.
83. Examination and cross-examination.
84. Questions to witness by members of court or judge-advocate.
85. Recalling of witnesses, and calling of witnesses in reply.

Friend of Prisoner and Counsel.

86. Prisoner may have a person to assist him on trial.
87. Counsel allowed in certain general courts-martial.
88. Requirements for appearance of counsel.
89. Counsel for prosecution.
90. Counsel for prisoner.
91. General rules as to counsel.
92. Qualifications of counsel.
93. Statement by prisoner defended by counsel or officer.

Proceedings.

94. Record in proceedings of transactions of court-martial.
95. Custody and inspection of proceedings.
96. Transmission of proceedings after finding.
97. Preservation of proceedings.
98. Rate of payment for copies of proceedings.
99. Loss of proceedings.

Judge-Advocate.

100. Appointment of judge-advocate and disqualification.
101. Substitute on death, illness, or absence of judge-advocate.
102. Powers and duties of judge-advocate.

Exception from Rules.

103. Suspension of rules on the ground of military exigencies or the necessities of discipline.

Field General Court-Martial.

104. Convening of field general court-martial.
105. Composition of field general court-martial.
106. As to field general court-martial where military exigencies occur.
107. Charge.
108. Trial of several prisoners.
109. Challenge.
110. Swearing of court.
111. Arraignment.
112. Plea to jurisdiction.
113. Witnesses.
114. Mode of swearing witness and solemn declaration.
115. Defence.

- 116. Acquittal.
- 117. Sentence.
- 118. General provisions as to votes and powers of court.
- 119. Confirmation.
- 120. Application of rules.
- 121. Definitions.
- 122. Evidence of opinion of convening and confirming officer.

PART II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under section 72 of the Army Act.

- 123. Courts of Inquiry.

Regulations for Courts of Inquiry under section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.

- 124. Courts of inquiry as to illegal absence under sect. 72.

Explanation of "Prescribed" and "Commanding Officer."

- 125. Prescribed officer for committing, removing, and commuting authority.
- 126. Prescribed procedure for court of inquest (India) under sect. 129.
- 127. Prescribed officer for competent military authority (sect. 101).
- 128. Definition of "commanding officer."

Colonial Prisons.

- 129. Committal and removal of prisoners in one colony to authorised prisons in other colonies.

PART III.—SUPPLEMENTAL.

- 130. Exercise of powers vested in holder of military office.
- 131. Cases unprovided for.
(M.L.)

- 132. Forms in appendices.
 - 133. Definitions.
 - 134. Construction of rules.
 - 135. Application of rules to Channel Islands and Isle of Man.
 - 136. Extent of application of rules.
 - 137. Short title.
 - 138. Commencement of rules.
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FIRST APPENDIX.

Forms of Charges.

SECOND APPENDIX.

Forms as to Courts-Martial.

THIRD APPENDIX.

Forms of Commitment.

RULES OF PROCEDURE, 1893. (a)

PART I.—ARREST AND TRIAL.

Arrest.

1. The special report of the necessity for further delay in ordering a court-martial to assemble for the trial of an officer or soldier required under section 45 of the Army Act, shall be made by means of a letter from the commanding officer of such officer or soldier reporting such necessity to the general or other officer commanding the district, garrison, or station.

Report of delay of trial under Army Act s. 45.

See generally as to Rules 1-8, chapter IV, and Q.R., Sect. VI, para. 19, *et seq.*

This rule prescribes the manner in which the special report required by s. 45 of the Army Act is to be made. A similar report must be furnished weekly until the prisoner is released or a court-martial assembled; and on the receipt of every such report, the general or other officer in command must satisfy himself as to the necessity for the continued detention of the prisoner. Q.R., Sect. VI, para. 20.

Power of Commanding Officer.

2. Every commanding officer will take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless such investigation seems to him impracticable with due regard to the public service. Every case of detention beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer commanding the district, garrison, or station.

Duty of commanding officer as to investigation of charge for offence.

Commanding Officer. See Rule 128 and note.

This Rule applies to officers as well as soldiers.

Investigated.—Army Act, s. 45 (5). This means that the investigation must be commenced, though it may be impossible to

(a) These Rules supersede the Rules of Procedure, 1881. The principal changes are the alterations in Rules 5, 7, 20, 37, and 92, the addition of Rule 38, and the application to field general courts-martial of the old rules as to summary courts-martial.

(M.L.)

2 Q 2

complete it within the time here specified. As to exclusion of Sunday, Good Friday, and Christmas Day, see Rule 134 (A).

Is not detained in custody, &c.—A commanding officer who unnecessarily detains a prisoner in arrest or confinement, exposes himself to a charge under s. 21 (1) of the Army Act.

Shall be reported.—The report should be made by letter, and should refer specifically to the case, and state the reasons justifying the detention and preventing the investigation. The absence of an important witness would justify a remand; or the prisoner might be ordered to return to his duty, with a distinct intimation that his case will be investigated so soon as the absent witness can be obtained. Q.R., Sect. VI, para. 42.

Hearing of
charge.

3. (A) Every charge against a soldier will be heard in the presence of the accused. The accused will have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence.

(B) If the accused demands that the evidence against him be taken on oath, the oath will be administered to each witness by the investigating officer in the same form as provided for a court-martial, or, in the case of a witness allowed before a court-martial to make a solemn declaration, the like solemn declaration will be made before the investigating officer.

(A) As to the mode of conducting the investigation, see chapter IV, paras. 18-28; and Q.R., Sect. VI, paras. 36-43.

The Army Act and Rules do not require the investigation to be by the commanding officer, but do make him responsible for the decision, s. 46 (1). The evidence is not taken in writing, and, therefore, in the case of a remand, must be taken in writing afterwards as directed by Rule 5.

(B) *Taken on oath*—See note to s. 46 (6) of the Army Act.

Same form.—See Rule 81.

To make a solemn declaration.—See Army Act, s. 52 (4), and Rule 81 (D).

Disposal of
charge by
command-
ing officer.

4. (A) The commanding officer will dismiss a charge brought before him if in his opinion the evidence does not show that some offence under the Army Act has been committed, or if, in his discretion, he thinks the charge ought not to be proceeded with.

(B) At the conclusion of the hearing of a charge, if the commanding officer is of opinion that the charge ought to be proceeded with, he shall, without unnecessary delay, dispose of the case, either summarily, if the accused is a soldier, and has not elected (under section 46 of the Army Act) to be tried by a district court-martial, or, whether the accused is or is not a soldier, by remanding him for trial by court-martial, or by reference to the proper superior military authority.

(C) If the accused is remanded for trial by court-martial, the commanding officer shall without unnecessary delay either issue an order for the assembly of a court-martial,

or apply to the proper military authority to convene a court-martial, as the case requires; this delay and any delay in the reference to superior military authority should not ordinarily exceed thirty-six hours.

(A) Every offence which a person subject to military law can commit is an offence against the Army Act, because it is either a military offence or a civil offence. If it is a civil offence, it is provided for by s. 41; if it is a military offence, it is either particularly specified in the Act, or is an act to the prejudice of good order and military discipline under s. 40. Where the act done is not a civil offence, and is not specified in the Act, the commanding officer must consider whether it is or not to the prejudice of good order and military discipline, as, if not, it is not a military offence. He must also consider whether, having regard to the limitations of time prescribed by the Act (sections 158 (1), 161), the prisoner is liable to be proceeded against. Q.R., Sect. VI, para. 41.

Ought not to be proceeded with.—If the commanding officer is of this opinion, on account either of the evidence being doubtful, or of the triviality of the case, or of the prisoner's good character, or of a doubt whether the act done is to the prejudice of good order and military discipline, or as a matter of discretion, for any reason, he must dismiss the case. Army Act, s. 46; Q.R., Sect. VI, para. 40. To make an entry against the man without punishment is not dismissal of the case. The case must also be dismissed if the man has been previously acquitted or convicted of the offence by his commanding officer, or by any court, military or civil, Army Act, ss. 46 (7), 157, 162 (6). No particular time is fixed within which a commanding officer must dispose of a case, so that he can always carefully consider a difficult case; but as a rule he should decide immediately, and should never delay for more than a day, unless further evidence is required.

(B) There is no offence which a commanding officer is *compelled* by the Act or Rules to send before a court-martial; but the offence of drunkenness by a private soldier must in certain cases be disposed of summarily. Army Act, s. 46 (3). Under para. 39 of Q.R., Sect. VI, the offences which should as a rule be disposed of summarily, or tried by a regimental court, are specified. A district court will, however, usually be convened, if the offence is not disposed of summarily.

As to the course to be followed, where sufficient evidence is not forthcoming at the investigation, or where a second offence is disclosed during the investigation, see Q.R., Sect. VI, paras. 42, 43.

Proper military authority, see Rules 133 (A), 134 (B).

(C) *Without unnecessary delay.*—The order for a regimental court-martial should as a rule be issued so as to admit of the court assembling next day, care being taken to allow the interval of eighteen hours required by Rule 14 (A).

Thirty-six hours.—As to exclusion of Sunday, &c., in reckoning time, see Rule 134 (A).

5. (A) Where the accused is remanded by his commanding officer for trial by general or district court-martial, the evidence of the witnesses who were present before the commanding officer shall be taken down in writing in a

Procedure
and summary
of evidence on
remand for

trial by
general or
district
court-
martial.

narrative form in the presence of the prisoner, who, if there is any variance between the evidence of any witness so taken down and the evidence previously given before the commanding officer, shall be allowed to put questions to the witness with reference to such variance, and such questions with the answers shall be added in writing to the evidence taken down.

(B) The evidence of each witness when taken down as provided in (A) shall be read over to him and shall be signed by him, or, if he cannot write his name, shall be attested by his mark and witnessed. Any statement of the prisoner material to his defence shall be added in writing.

(C) The above evidence and the statement, if any, shall be taken down before the commanding officer, or such officer as he directs; and unless the prisoner has himself elected (under section 46 of the Army Act) to be tried by a district court-martial, the commanding officer may, if he thinks it desirable, rehear the case and dispose of it summarily instead of remanding the prisoner for trial by court-martial.

(D) The evidence and statement (if any) taken in pursuance of this rule (in these rules referred to as the summary of evidence), or a true copy thereof, shall be laid before the court-martial before whom the prisoner is tried, on the assembly of the court.

(E) A true copy thereof shall, if the case is such as appears to the convening officer to render it desirable, be given to the prisoner gratis, and in any other case shall, if the prisoner so requests, be given to him on payment of one penny for every seventy-two words, and where the prisoner has not obtained a copy of the summary of evidence, the court should permit him to inspect the summary, or the copy thereof, laid before the court, or may order a copy thereof to be given to the prisoner gratis.

(C) The commanding officer, on remanding the accused for trial by court-martial, may direct another officer to take the evidence in writing. On this being done, a different aspect may be given to the case; if so, the commanding officer may, unless the prisoner has himself elected under s. 46 to be tried by a district court-martial, rehear the case, and, if he thinks fit, may dispose of it summarily. The prisoner must be allowed to put any reasonable question to a witness, and to put questions respecting any variance between the evidence taken down and that given before the commanding officer, such, *e.g.*, as would arise if the witness's answers in cross-examination before the commanding officer were omitted. In taking the evidence immaterial statements may be omitted; the material statements only of the prisoner are to be added, but it will be advisable usually to take down fully any statement he makes; he cannot be required to sign it. The statement of a prisoner can only be given in evidence at the trial, if it is voluntary (see ch. VI, paras. 74 to 81).

Before, therefore, a prisoner makes any statement, he should be warned that he is not bound to say anything, and that any statement he makes may be used as evidence against him; and, if he is asked for his defence, a similar warning should be given to him; and in no case must he be authoritatively called on to account for his proceedings, or required to make any statement.

(D) The convening officer should always order a copy of the summary to be given to the prisoner, if the case is complicated. The discretion is given for the purpose of making it unnecessary to give the prisoner a copy when the facts are very simple. For the power to dispense with this rule, see Rule 103.

Where the prisoner is charged with several offences, the evidence in relation to each offence should be kept, so far as possible, distinct.

The evidence and statement are not required to be taken down in the case of a remand for trial by a regimental court-martial.

As to summary of evidence at trial, see Rule 17 (E), and note.

6. (A) The term of imprisonment when awarded by a commanding officer in days shall begin on the day of the award. The term of imprisonment when awarded by a commanding officer in hours shall begin at the hour when the prisoner is received at the provost prison, or the public prison, military or civil, to which he is committed, or if he has not been sooner received into the prison, shall begin on the day after the day of the award at the hour fixed for the commitment and release of prisoners.

Summary
award of
punishment
by com-
manding
officer.

(B) When the commanding officer has once awarded punishment for an offence, he cannot afterwards increase that punishment for that offence.

Commanding officers must bear in mind the regulations as to summary award of punishments, Q.R., Sect. VI, paras. 47-57; and as to drunkenness, *ib.* paras. 58-66. See also ch. IV, paras. 31-38.

(A) A commanding officer will award his sentence, up to seven days, in hours, but if exceeding seven days, in days. Q.R., Sect. VI, para. 47 (2). In law (in the absence of special provision) there is no division of a day, and, therefore, however late in the day a prisoner is committed, his term of imprisonment is considered to have commenced at the first minute of that day, that is, the first minute after midnight. Where, therefore, the sentence is awarded in days, the sentence will begin on the first minute of the day of the award. But where a sentence is awarded in hours, the imprisonment by virtue of this rule will not commence until the hour at which the prisoner is received into the prison, or if he is not received into the prison on the day of the award, then until the hour at which on the next day prisoners are usually received into the prison. This rule will, therefore, allow a commanding officer, when there is no accommodation in the provost prison, to postpone the commitment of the prisoner for one day, and to keep him in the guard-room without his term of imprisonment beginning to run, till the usual hour of commitment on the next day after the imprisonment is awarded, whether Sunday or not (see Rule 134 A); but if he is kept longer in the guard-room, his term of imprisonment will begin to run. It must be recollected that a prisoner's pay cannot be stopped for

any day on which he is detained, before his imprisonment begins to run under this rule.

(B) The award is considered final when the prisoner has been removed from the presence of the commanding officer. The commanding officer can at any time afterwards diminish the punishment, though he cannot add to it.

As to entry of award or decision of commanding officer in each case, Q.R., Sect. VI, paras. 38, 57.

Right of trial by court-martial in lieu of summary award.

7. (A) If a soldier is dealt with summarily by his commanding officer, otherwise than by the award of a minor punishment, and his commanding officer has omitted to ask him whether he desires to be dealt with summarily or to be tried by a district court-martial, the soldier may, at any time, on the same day, before the hour fixed for the commitment and release of prisoners, claim his right to be tried by a district court-martial.

(B) Except as mentioned in sub-section (8) of section 46 of the Army Act, and in this rule, a soldier has no right to claim a trial by court-martial.

A commanding officer should of course never omit to put to the soldier the question which he is directed by s. 46 (8) of the Act to put; but in the case of such an omission the soldier may claim a court-martial within the time mentioned in this rule.

Right to be tried.—The effect is that the court tries the case without reference to the proceedings of the commanding officer as regards the question of the prisoner's guilt or innocence. The claim of the soldier to be tried is not of itself a reason for awarding a more severe punishment than the commanding officer might have awarded. While it is competent to the court to pass such a sentence as the nature and degree of the offence and the antecedents of the prisoner may seem to them to warrant, they should bear in mind that the commanding officer, who is primarily responsible, has, by electing to make a summary award, implied that a summary punishment is in his judgment sufficient in the interests of discipline.

Procedure on charge against officer.

8. (A) Where an officer is charged with an offence under the Army Act the investigation shall be held, and the evidence taken in his presence in writing, if he requires it, in the same manner, as nearly as circumstances admit, as is required by Rules 3 and 5 in the case of a soldier.

(B) Where an officer is ordered for trial by court-martial without any such taking of evidence in his presence, an abstract of the evidence to be adduced shall be delivered to him gratis not less than twenty-four hours before his trial, and shall be laid before the court-martial on its assembly.

(A) The effect of this provision is to give the commanding officer the option of dispensing with any public proceeding preliminary to trial, unless the accused officer demands it. It does not preclude the commanding officer from calling the officer before him and investigating the case as he may deem necessary.

The officer, however, can only demand the formal investigation of his case by the commanding officer, and has no right under this Rule to demand a court of inquiry.

(B) The convening officer will be responsible for the preparation and furnishing of this abstract, which should not be too much in detail. It should always be delivered as a matter of course, even though the subject matter of the charge may previously have been investigated by a court of inquiry; and if a court of inquiry has been held, the officer may have a copy of its proceedings. See Rule 123 (H).

Where there are several charges, the abstract should be divided so as to correspond to each charge.

For the power to dispense with observance of this rule on the ground of military exigencies, or the necessities of discipline, see Rule 103.

Framing Charges.

9. (A) A charge-sheet contains the whole issue or issues to be tried by a court-martial at one time. Charge-sheet and charge.

(B) A charge means an accusation contained in a charge-sheet that a person amenable to military law has been guilty of an offence.

(C) A charge-sheet may contain one charge or several charges.

The convening officer is by Rule 17 made responsible for the charge, which in practice is usually framed by the adjutant, or some other officer under the direction of the convening officer.

10. Every charge-sheet will begin with the name and description of the person charged, and should state, in the case of an officer, his name, and rank, and corps (if any), and in the case of a soldier, his name, number, rank, and corps (if any), and where he does not at the time of the trial belong to the regular forces should show by the description of him, or directly by an express averment, that he is amenable to military law in respect of the offence charged. Commencement of charge-sheet.

The name or description of a person charged is immaterial, so long as his identity is established. In military courts it is also necessary to establish that he is subject to military law. As an officer or soldier of the regular forces is always subject to military law, a statement that the prisoner belongs to a battalion composed of the regular forces, will be sufficient to aver, and evidence of his so belonging will be sufficient to prove, without expressly adding the words, that he is subject to military law. If the prisoner belongs to the militia, yeomanry, or volunteers, or to the reserves, the charge must state, and the court must by evidence or from their military knowledge be satisfied, that he was at the time of the offence subject to military law. If he is a civilian, or if his name and position are unknown, as may happen in the case of active service, the charge should expressly aver that he was subject to military law, although it will be sufficient if the description of the prisoner is such as to imply that he was so subject. Evidence must be given

of the fact, as for instance that he was a sutler, or the holder of a pass from the officer in command, or that he was found in camp or under such circumstances as to show that he was subject to military law. See illustrative form No. 9, p. 706.

Contents of charge.

11. (A) Each charge should state one offence only, and in no case should an offence be described in the alternative in the same charge.

(B) Each charge should be divided into two parts—

- (1) The statement of the *offence*; and,
- (2) The statement of the *particulars* of the act, neglect, or omission constituting the offence.

(C) The offence should be stated, if not a civil offence, in the words of the Army Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(D) The *particulars* should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him as such offence.

(E) The *particulars* in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge.

(F) Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the *particulars* should state those facts.

(A) to (C). See First Appendix, Forms of Charges, and Preliminary Note as to use of Forms of Charges, p. 688.

A single transaction, although technically disclosing more than one offence, should not as a rule be made the subject of more than one charge. For instance, where violence to a superior is accompanied by insubordinate language, the violence alone should be charged, the language being admissible in evidence as to the intent.

Words of the Army Act.—Under Rule 133 (C), this will include the words of any other Act creating the offence, such for instance as the Acts relating to the reserve or auxiliary forces. Where the offence is under any such Act, care must be taken to observe this rule. See Note as to use of Forms of Charges (25), p. 691.

Although the description of an offence in the alternative in the same charge would make the charge bad, it does not therefore follow that the word “or” is never to appear in the charge. For instance a charge under section 15 of the Act of “when in garrison, being found beyond the limits fixed by general orders without a pass or written leave from his commanding officer” is a good charge, because in this case he is not charged with one offence or the other, but with a single offence, which is constituted by his having neither a pass nor written leave. If in the charge

the words "beyond the limits fixed by general or garrison orders" were used, the charge would be a bad charge, because it might be one offence to be beyond the limits fixed by general orders, and another offence to be beyond the limits fixed by garrison orders.

When offences against civil law are tried by court-martial under section 41 of the Army Act, although technical terms need not be used in the charge, the essence of the civil offence must be expressed—*e.g.*, in a case of damaging property, the charge must aver the damage to have been done "wilfully" or "maliciously."

(D) If of the acts or omissions indicated in the particulars sufficient are not proved to constitute the offence charged, but nevertheless other acts and omissions not so indicated sufficient to constitute the offence are proved, the prisoner is entitled to be acquitted of the charge, but may be detained in custody and be tried anew in respect of the last-mentioned acts or omissions. For instance, if the prisoner is charged with having been absent without leave, in that he was absent from his regiment without leave on the 10th, 11th, and 12th days of August, and he proves that on those three days he was in barracks on duty, but it appears from the evidence that he was absent without leave on the 21st of the same month, the date is so material as to amount to a new charge, and the prisoner must be acquitted, though he may be tried on a new charge of being absent without leave on the 21st of August. In such a case a special finding is of no avail, as it cannot introduce new material particulars not mentioned in the charge. See note to Rule 44 (C).

If, however, he were charged with being absent from the 10th of August until he was apprehended on the 21st, and it is proved that he was absent during that time, but that his absence began on the 1st of August and he was apprehended on the 23rd, he may be convicted, as the material part of the charge, absence from the 10th to the 21st of August, is proved.

When there is such a divergence between the head of charge and the statement of the particulars that each in substance discloses a different offence, the charge is bad, and a conviction, even on a plea of guilty, could not be upheld. But the incidental mention of a separate offence in the particulars would not of itself invalidate the charge. A charge of desertion in which the particulars alleged that the prisoner broke out of barracks on a certain day, and was absent without leave for a certain time, was held to be good, inasmuch as these facts were mentioned as incidents of the offence charged, and the prisoner was still distinctly informed that the charge he had to meet was one of desertion. So was a charge of desertion (in which the duration of the absence was an element) where the particulars stated that the prisoner absented himself without leave for the time stated. Where the head of charge discloses no offence, but the statement of particulars does, and with sufficient precision to inform the prisoner of his offence, a conviction of the offence disclosed in the particulars was, notwithstanding the irregularity, held good.

(E) An instance of this will be seen in Form No. 48 of the illustrative forms added at the end of the First Appendix. If in such cases the prisoner were to be acquitted of the first charge and convicted of the second charge, the conviction when recorded should specify the place and date mentioned in the first charge.

(F) If these facts are stated in the charge, evidence must be given by the prosecution to show the amount which ought to be deducted from the prisoner's pay.

By Q.R., Sect. VI, paras. 86-88, the value of any article in respect of which it is desired that the court shall sentence the offender to stoppages must be stated in the particulars. It is, however, unnecessary to state the value of regimental necessities, as a court-martial does not award stoppages for them. As to evidence of value, see note to s. 24 (4).

Validity of
charge-
sheet.

12. (A) A charge-sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if he does not object to the charge-sheet during the trial, and it is not shown that injustice has been done to the person charged.

(B) In the construction of a charge-sheet or charge there shall be presumed in favour of supporting the same every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.

(A) Although the trial of an offender is not invalid on account of a mistake in a name, such mistakes are dangerous, in so far as they may lead to mistakes of substance. For instance, the prisoner might thus be mistaken for a man named in a certificate of previous conviction or in the defaulters' book, and a mistake of this description might cause the invalidity of the whole proceeding. Where, however, a man has enlisted and is commonly known under an assumed name, he may be described by that name. The court has power to amend the charge by correcting any mistake in the prisoner's name or description under Rule 33 (A).

(B) The object of this paragraph is purely legal, and does not touch the duties of an officer. If the proceedings were questioned in a court of law it would require that court to presume matters which, though not stated in the charge, were necessary to support its validity.

Prisoner's Preparation for Defence.

Opportunity for
prisoner to
prepare
defence.

13. A prisoner for whose trial a court-martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser with whom he may wish to consult.

The freest communication which is consistent with good order and military discipline and with the safe custody of the prisoner should be allowed. A failure to give the prisoner full opportunity of preparing his defence, and free communication with others for the purpose, may invalidate the proceedings.

The prisoner is not bound to call as witnesses every one with whom he communicates with reference to giving evidence.

As to friend of prisoner in court, see Rule 86; and as to counsel at general and district courts-martial, Rules 87-93.

As to the right of the prisoner to consult the judge-advocate on questions of law, see Rule 102 (A).

Informa-
tion of

14. (A) The prisoner before he is arraigned should be informed by an officer of every charge on which he is to

be tried ; and also that, on his giving the names of any witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly ; the interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen and in the case of any other court-martial, than twenty-four hours.

charge and
delivery of
list of
officers to
prisoner.

(B) The officer at the time of so informing the prisoner should give the prisoner a copy of the charge-sheet, and, where the prisoner is a soldier, should, if necessary, explain the charge-sheet and charges to him, and should also, if he is illiterate, read the charges to him.

(C) A list of the names, rank, and corps (if any), of the president and officers who are to form the court, and where officers in waiting are named, also of those officers, should, as soon as the president and officers are named, be delivered to the prisoner if he desires it.

(D) If it appears to the court that the prisoner is liable to be prejudiced by any non-compliance with this rule, the court should take steps, and, if necessary, adjourn to avoid the prisoner being so prejudiced.

Arraigned. See chapter V, para. 49.

(A) By Rule 78 (A) the convening officer, or, after the assembly of the court, the president of the court, is required to take the proper steps to procure the attendance of witnesses whom the prisoner desires to call. Commanding officers will therefore take care that any request of the prisoner for witnesses shall be transmitted to the convening officer, or, after the court is convened, to the president of the court. The request of a prisoner should only be refused, if it is quite clear that the evidence of the witness will be immaterial, or if it is impossible to secure the attendance of the witness within a reasonable time. Any refusal of his request should be communicated to the court, with the reasons for the refusal, and the court will deal with the matter under paragraph (D). See also Rule 77.

In the case of an essential witness the court should always adjourn for the purpose of enabling him to attend, as the absence of such a witness may cause the proceedings to be invalid.

(B) A copy must always be given, unless the provisions of this rule are dispensed with under Rule 103. Even where they are dispensed with, the full charge must be clearly explained to the prisoner, as otherwise he has not proper opportunity to make his defence. If the prisoner objects to the charge, he will have an opportunity of making his objection when called on to plead. Rule 32.

(C) In the case of a general court-martial, this list should invariably be delivered, although a request is not made. In the case of a district court-martial also, the list should be delivered, notwithstanding the absence of a request, if there is any reason to suppose from the circumstances of the case, that the prisoner may reasonably object to any member of the court.

The prosecutor will usually be the officer on whom the duty of

complying with the provisions of Rule 14 devolves; when he is not, he should, before the trial, satisfy himself that it has been complied with. Compliance with this rule, as well as with Rule 13, may be dispensed with on the ground of military exigencies, or the necessities of discipline, by virtue of Rule 103; but in every case the prisoner must have information of the charge, and opportunity of calling his witnesses.

(D) See note above on (A).

Joint trial
of prisoners.

15. Any number of prisoners may be tried together for an offence charged to have been committed by them collectively, but in such case notice of the intention to try the prisoners together should be given to each prisoner at the time of his being informed of the charge, and any prisoner may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other prisoners proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that such evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and such prisoner shall be tried separately.

If the nature of the charge.—In the case of conspiring to cause a mutiny, or joining in a mutiny, the essence of the charge is combination between the prisoners. In such a case, the nature of the charge may not admit of their being tried separately. In case of doubt, the prisoners should be tried separately.

See Rule 71 and note.

Convening of Court-Martial.

Convening of
regimental
court-martial.

16. A regimental court-martial shall be ordered to assemble as soon as seems to the convening officer practicable (having regard to Rule 14 (A)), after the completion of the investigation by the commanding officer into the charge which the court-martial is to try.

See Army Act, s. 47, Q.R., Sect. VI, para. 81. For form see Appendix II, Form No. 3.

A regimental court-martial should assemble as soon as possible after the interval, which is required by Rule 14 (A), between the prisoner being informed of the charge and the meeting of the court. Where, therefore, that rule is suspended by an order under Rule 103, the court should assemble immediately.

The officer convening a regimental court-martial will appoint or detail (see Rule 17, D) not less than three officers as members of the court, each of whom must have held a commission during not less than one whole year. The above number (which is the legal minimum for a regimental court-martial) includes the president, who is also appointed by the convening officer, and must not be under the rank of captain, except in the case of the court being held on the line of march, or on board a ship, or unless the con-

vening officer is of opinion that a captain is not, with due regard to the public service, available. In the latter case he must state that opinion in the order convening the court. In any of the above excepted cases he can appoint an officer of any rank to be president; but he can in no case appoint himself, or, indeed, sit on the court-martial. Army Act, ss. 47 (3) (4); 50 (2).

Regimental courts-martial will now, however, be infrequent, as it has been laid down that, for cases not summarily disposed of, a district court-martial should as a rule be convened.

17. (A) An officer before convening a court-martial should first satisfy himself that the charges to be tried by the court are for offences within the meaning of the Army Act, and that the evidence justifies a trial on those charges, and if not so satisfied should order the release of the prisoner, or refer the case to superior authority.

Procedure of officer on convening court-martial.

(B) He should also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(C) If more than *fifteen* days in the United Kingdom, or more than *thirty* days elsewhere, elapse between the time when an officer having power to convene a general or district court-martial receives an application for a court-martial, and the date at which the case is disposed of, either by the assembly of a general or district court-martial, or otherwise, the officer shall report the case, and the reasons for the delay, to the commander-in-chief.

(D) The officer convening a court-martial shall appoint or detail the officers to form the court, and may also appoint or detail such waiting officers as he thinks expedient.

(E) The officer convening a court-martial shall send to the officer appointed president the original charge-sheet on which the prisoner is to be tried, and the summary or abstract of evidence.

(A) and (B). With respect to the duties of the convening officer, see chapter V, paras. 28-33; and Q.R., Sect. VI, paras. 67-94.

(C) The convening officer must state in the order convening the court his opinion in the following cases:—

(1) As to the rank of the president (see Army Act, s. 47 (4), 48 (9)).

(2) As to the rank of members (Rule 21).

(3) As to members belonging to different corps or regiments (see Rules 20, 21).

The opinion as to military exigencies dispensing with certain rules (see Rule 103) should be in a separate order, signed by the convening officer.

(D) See generally as to a general or district court-martial, the number of members and their qualification and rank, and the rank of the president, Army Act, ss. 48, 182 (4); Q.R., Sect. VI, paras. 99, 101.

The convening officer must appoint by name the president of a

general or district court-martial, who must not be under the rank of field officer, unless—

- (i) the convening officer is under that rank ; or
- (ii) the convening officer is of opinion that a field officer is not, with due regard to the public service, available.

In either of such cases he may appoint an officer not below the rank of captain ; and in the case of a district court-martial, if he thinks a captain is not, with due regard to the public service, available, may appoint an officer below that rank, unless the court is to try a warrant officer. Army Act, ss. 48 & 182 (4). But whenever a general officer or colonel is available to sit as president of a general court-martial, an officer of inferior rank is not to be appointed. Q.R., Sect. VI, para. 101 (a).

The legal minimum of a general court-martial in the United Kingdom, India, Malta, and Gibraltar is nine, and elsewhere five.

The legal minimum of a district court-martial is three. Army Act, s. 48 (3), (4).

Under s. 53 of the Army Act a court-martial, which, after the commencement of the trial, is reduced below the legal minimum, is dissolved. The Queen's Regulations (Sect. VI, para. 99), therefore point out that where the trial is likely to be prolonged it is desirable to form a general court-martial of more than the legal minimum, in order that the court may not be dissolved, if one member falls through illness or otherwise. In such case not less than thirteen officers should usually be appointed, or if thirteen cannot conveniently be assembled, eleven. In the case of a district court-martial it will seldom be necessary to appoint more than the legal minimum, as it is unusual for a trial before a district court-martial to extend beyond two days, and little inconvenience will usually arise from the dissolution of the court, as if the proceedings have not been concluded, the prisoner can be tried by another court.

It will usually be desirable, in the case of a general court-martial where the trial is likely to be prolonged, to add two or more waiting officers, in order to fill the places of officers retiring on a challenge, and the same course will not unfrequently be expedient in convening a district court-martial. Q.R., Sect. VI, para. 99.

(E) The object of this is to enable the original charge-sheet to be annexed to the proceedings, and also to enable the president of the court-martial to examine before the court meets the charge-sheets and summary of evidence in the different cases, so that he may have a general knowledge of the cases which are to come before the court. If any amendment in the charges appears to him to be required he should communicate with the convening officer before the trial begins. See above, Rule 5 (D).

The summary of evidence may be used at the trial for the purpose of showing that the witness has contradicted himself or has made a particular statement ; and during the trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance should question the witness respecting the variance.

The summary of evidence cannot otherwise be used as evidence, and if the witness is absent, must not be read or referred to by the court so far as it relates to that witness. Great care must be taken by the members of the court not to be biassed in any way by the statements in the summary of evidence, except so far as they affect the credibility of the witness by showing that he has

contradicted himself; indeed, it may usually be expedient that no one but the president should refer to the summary.

Any statement of the prisoner contained in the summary of evidence, if not taken contrary to the directions in note to Rule 5 (C), may, and usually should, be read to the court as evidence, whether it is in favour of or against the prisoner.

Where the prisoner pleads guilty, the summary of evidence is to be annexed to the proceedings (see App. II, Form of Proceedings, para. 4, p. 730). If the prisoner pleads not guilty, the summary may be destroyed, but it will usually be convenient to annex it to the proceedings, and it ought to be so annexed in any case, where there is a material variance between the statement of any witness in the summary and his evidence at the trial.

Abstract of Evidence. See Rule 8 (B).

18. (A) If before the prisoner is arraigned the full number of officers detailed are not available to serve, by reason of non-eligibility, disqualification, challenge, or otherwise, the court should ordinarily adjourn for the purpose of fresh members being appointed; but if the court are of opinion that in the interests of justice, and for the good of the service, it is inexpedient so to adjourn, they may, if not reduced in number below the legal minimum, proceed, recording their reasons for so doing.

Adjournment for insufficient number of officers.

(B) If the court adjourns for the purpose of the appointment of a new president, or of fresh members, whether under these rules or otherwise, the convening officer may, if he thinks fit, convene another court.

(A) Under this paragraph a court for which, say, thirteen members have been detailed, will not ordinarily begin the trial with less than thirteen, although they *may* proceed, unless reduced below the legal minimum (see notes to Rules 16, 17). The court should always adjourn, unless there are strong reasons against it.

If at any time the number of officers is, from whatever cause, below the legal minimum, or the president is absent (Rule 65 (B)), there is no court; if the proceedings under Rule 22 are not begun, no court can be formed; if they are begun they must immediately cease. In either case a report of the circumstances should be made to the convening officer by the president, or, if he is absent, by the senior officer present.

(B) *New President.*—This will apply if the president is found to be ineligible or disqualified (Rules 19, 22), or not to be of the required rank (Rule 22 (A) iv), or if an objection to the president is allowed (Army Act, s. 51 (3), and Rule 25), or if the president cannot attend (Army Act, s. 53 (2)).

Fresh Members.—The court will adjourn under the circumstances mentioned in paragraph (A) of this rule, as to which see Rules 19, 22, and 25, and Army Act, s. 51. After the trial has once begun, fresh members cannot be appointed in any circumstances, s. 53 (1).

19. (A) An officer is not eligible for serving on a court-martial if he is not subject to military law.

Ineligibility and

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disqualifica-
tion of
officers for
court-
martial.

(B) An officer is disqualified for serving on a court-martial on a prisoner if such officer—

- (i.) Is the officer who convened the court ; or
- (ii.) Is the prosecutor or a witness for the prosecution ; or
- (iii.) Investigated the charges before trial, or was a member of a court of inquiry respecting the matters on which the charges against the prisoner are founded ; or
- (iv.) Is the commanding officer of the prisoner, or of the corps or battalion to which the prisoner belongs ; or
- (v.) Has a personal interest in the case.

(c) An officer is not eligible to serve on a court-martial unless he has held a commission during not less than the following periods next preceding the day appointed for the assembling of the court, that is to say :—

- (i.) If it is a regimental court-martial, one whole year ;
- (ii.) If it is a district court-martial, two whole years ;
- (iii.) If it is a general court-martial, three whole years.

(A) *Eligible* is used with reference to an officer being subject to military law, and of the necessary standing. It refers, in point of fact, to the status of the officer, and involves no personal considerations.

(B) *Disqualified*, on the other hand, is used with reference to personal disqualification on the part of an officer.

It will be observed that most of the disqualifications are contained in the Army Act, s. 50 (2), (3).

Except so far as provided by Rule 20, the corps to which an officer belongs is immaterial as regards his eligibility or qualification to serve on a court-martial, for the Army Act, s. 50 (1), provides that "the officers sitting on a court-martial may belong to the same or different corps, or may be unattached to any corps, and may try persons belonging or attached to any corps."

(iii.) *Investigated*.—This will not include the officer who merely takes the summary of evidence, nor the captain of a company who makes a preliminary inquiry into the case, but will only include the officer who conducted the official investigation, whether the commanding officer himself or an officer deputed by him.

(v.) *Personal interest*.—This will extend to even a remote or very small interest; for example, in a charge relating to the embezzlement of a sum, however small, belonging to the regimental mess, every officer of that mess has a personal interest, and is therefore disqualified. A remote or even a merely technical interest has been held to disqualify a person in a judicial position. For example, a person who holds as trustee or otherwise on behalf of others money in which he has no beneficial share himself, nevertheless has a personal interest in any charge relating to that money.

(C) This is taken from the Army Act, ss. 47 (2), 48 (3) (4).

Further, an officer is not, when it can be avoided, to be detailed to sit on a court-martial unless he has previously

attended as a supernumerary at least six times. When the number is three, not more than one member is to be a subaltern officer. In doubtful or complicated cases the court should still, when possible, consist of five officers.

20. (A) A general or district court-martial shall, as far as seems to the convening officer practicable, be composed of officers of different corps, and in no case shall be composed exclusively of officers of the same regiment of cavalry, or the same battalion of infantry, unless the convening officer states in the order convening the court that in his opinion other officers are not (having due regard to the public service) available, and also, if he belongs to the same regiment of cavalry or battalion of infantry as the prisoner, that an order to convene a court composed partly of other officers cannot be obtained from superior authority within a reasonable time.

Corps of members of court-martial.

(B) In the case of a court-martial for the trial of a prisoner belonging to the auxiliary and not to the regular forces, unless the convening officer states in the order convening the court that in his opinion it is not (having due regard to the public service) practicable, one member at least of the court should belong to the auxiliary forces, and to that branch of the auxiliary forces to which the prisoner belongs.

(A) General and district courts-martial are army and not regimental courts, and are therefore to be composed of officers who do not belong to the same regiment.

(B) For example, if the prisoner is a volunteer, one member of the court must, if practicable, belong to the yeomanry, militia, or volunteers, and ought to be a volunteer officer.

In applying this rule, it must be recollected that officers of the yeomanry or volunteers are usually not subject to military law, and, except when so subject, are not eligible to serve on a court-martial.

21. (A) In the case of a general court-martial, five at least of the members must not be below the rank of captain.

Rank of members of court-martial in certain cases.

(B) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless, in the opinion of the convening officer, to be stated in the order convening the court and to be conclusive, officers of that rank are not (having due regard to the public service) available; and in no case shall an officer under the rank of captain be a member of a court-martial for the trial of a field officer.

(A) Army Act, s. 48 (3).

(B) The last two lines are taken from the Army Act, s. 48 (7).

On the trial of a subaltern officer, two officers of subaltern rank

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will be a sufficient proportion to be detailed as members of the court.

Whenever a general officer or colonel is available, an officer of inferior rank is not to be appointed president of a general court-martial.

When a commanding officer of a corps is brought to trial, as many members of the court as possible must be officers who have themselves held, or who are holding, commands equivalent to that held by the prisoner. Q.R., Sect. VI, para. 101.

Procedure at Trial.—Constitution of Court.

Inquiry by
court as to
legal consti-
tution.

22. (A) On the court assembling, the order convening the court shall be read, and also the names, rank, and corps of the officers appointed to serve on the court; and it shall be the first duty of the court to satisfy themselves that the court is legally constituted; (that is to say),

- (i.) That so far as the court can ascertain, the court has been convened in accordance with the Army Act, and these Rules;
- (ii.) That the court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 18, not less than the number detailed;
- (iii.) That each of the officers so assembled is eligible and not disqualified for serving on that court-martial;
- (iv.) That the president is of the required rank and duly appointed; and
- (v.) In the case of a general court-martial that the officers are of the required rank.

(B) The court should further, if it is a general or district court-martial to which a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified for acting at that court-martial.

(C) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

It is of great importance for the court, as far as lies in their power, to ascertain that they have jurisdiction. See chapter VIII.

(A) See Appendix II, Form of Proceedings, para. (1) p. 725.

(i) The sections of the Army Act relating to the convening of courts martial are ss. 47, 48, 49, 50, 122, 123; in the case of marines, s. 179; in the case of Her Majesty's Indian forces, s. 180; in the case of warrant officers, s. 182 (4); and in the case of persons not belonging to Her Majesty's forces, s. 184 (1). The rules referring to the convening of the court are Rules 17 to 21.

The court, in considering whether they are convened in

accordance with the Act and Rules, can only look at the order convening the court, and cannot inquire whether the officer issuing the order has or has not a warrant which justifies the issue of the order. But they must have regard to Rules 20 and 21, and should see that the order states all that it is required to state. (See note to Rule 17.)

(ii) *Legal minimum*, see Army Act, ss. 47, 48, and note on Rule 17. In counting the number of officers the president is included.

(iii) applies to the president as well as to the other officers.

As to eligibility and non-disqualification, see Rule 19 and note, and chapter V, para. 37.

(iv) As to *rank of president*, see Army Act, ss. 47 (4), 48 (9), 182 (4). If the president in the case of a general or district court-martial is not a field officer, it will be necessary to ascertain that a proper statement is in the order convening the court. See note to Rule 17 (D).

(v) *Required rank*. See Rule 21, and note.

(B) The court must consider whether the judge-advocate is appointed by the proper authority as well as in the proper manner. In the United Kingdom, therefore, they should ascertain that the judge-advocate is appointed by the Judge-Advocate-General. Out of the United Kingdom, if the judge-advocate is appointed by the convening officer, the court must assume that that officer is authorised by a warrant to appoint the judge-advocate.

23. (A) The court, when satisfied on the above matters, should satisfy themselves in respect of each charge about to be brought before them,—

Inquiry by court as to amenability of prisoner and validity of charge.

- (i) That it appears to be laid against a person amenable to military law, and to the jurisdiction of the court ; and
- (ii) That each charge discloses an offence under the Army Act, and is framed in accordance with these rules, and is so explicit as to enable the prisoner readily to understand what he has to answer.

(B) The court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

(A) *Satisfy themselves*. See Appendix II, Form of Proceedings, para. (1), p. 725.

Amenable to military law.—See introductory observations to Part V of the Army Act, p. 535, *et seq.*

Amenable to the jurisdiction of the Court.—The following are examples of cases where the prisoner would not be amenable:—if the court were a regimental court-martial and the prisoner were a warrant officer or camp follower (Army Act, s. 182 (1), 184 (1)) ; or if a reserve man were charged with an offence committed when not subject to military law, unless the offence be one mentioned in the Reserve Forces Act, 1882, ss. 6, 15 ; if the prisoner were a field officer, and the court comprised a member under the rank of captain (Army Act, s. 48 (7), and Rule 21 (B)) ; if the court were

a field general court-martial under s. 49, and the prisoner was not on active service, and the offence charged was not committed against the property or person of an inhabitant of or resident in the country.

In the case of persons not belonging to the forces, the question of amenability may depend on whether such person is subject to military law as an officer (Army Act, s. 175 (7) (8)), or as a soldier (see Army Act, s. 176 (9), (10)).

Where the prisoner is a marine, the question whether he is amenable or not (see s. 179 (1)) cannot be apparent to the court, and therefore at this stage of the proceedings the court must presume that the prisoner is amenable, unless the prisoner challenges their jurisdiction on some ground which appears to them reasonable and probable; in that case they should refer to the convening officer.

Questions of amenability may also possibly arise with reference to natives of India (see Army Act, ss. 175 (7), 176 (10), and 180 (2) (a)).

Framed.—See Rules 10 and 11.

The inquiry by the court under Rules 22 and 23 is not required to be, but may be, in closed court.

Procedure at Trial.—Challenge and Swearing.

Appearance
of prose-
cutor and
prisoner.

24. When the court have satisfied themselves as to the above facts, the prosecutor, who must be a person subject to military law, should take his place, and the court shall cause the prisoner to be brought before the court.

The duty of appointing the prosecutor devolves on the convening officer, who, in the trial of a soldier, ordinarily selects the adjutant of the prisoner's regiment. In trials by general court-martial, and in complicated cases, a prosecutor should be specially selected for his experience and knowledge of military law, and should be, as far as possible, relieved from ordinary military duties, so that he may be enabled fully to master the case.

As to counsel, see Rules 87-93.

Proceedings
for chal-
lenge of
members of
court.

25. (A) The court, upon the prisoner being brought before them, shall ascertain that the court is constituted of officers to whom the prisoner makes no reasonable objection.

(B) The prisoner has no right to object to the prosecutor or judge-advocate.

(C) The prisoner shall state the names of all the officers to whom he objects before any objection is disposed of.

(D) The prisoner may call any person to give evidence in support of his objection.

(E) If more than one officer is objected to, the objection to each officer will be disposed of separately, and the objection to the lowest in rank will be disposed of first; except that, if the president is objected to, the objection to him will be disposed of before the objection to any other officer. On an objection to an officer, all the other officers present shall declare their opinions on the disposal

of such objection, notwithstanding that objections have been made to any of those officers.

(F) When an objection to an officer is allowed, that officer shall forthwith retire, and take no further part in the proceedings.

(G) When an officer objected to (other than the president) retires, and there are any officers in waiting, the vacancy shall be forthwith filled by one of the officers in waiting being directed to serve in lieu of the retiring officer. If there is no officer in waiting available, the court will proceed as directed by Rule 18.

(H) The eligibility, absence of disqualification, and freedom from objection of an officer filling a vacancy, including that of president, will be ascertained by the court, as in the case of other officers appointed to serve on the court.

This rule must be read in connection with section 51 of the Army Act.

For Form, see Appendix II, Form of Proceedings, para. (2), p. 726.

(A) The prisoner cannot object to the court collectively, but must make each objection separately. If the prisoner persists in objecting to the court collectively, the court should treat the objection as made to all the members individually, and should deal with such objections in the usual way. The court may be closed to consider each objection. The objections, together with the statement of any witnesses examined are to be entered in the proceedings.

An officer objected to on the score of personal enmity, prejudice, or malice, or having formed and expressed an opinion on the case, should, unless the objection is obviously groundless, request and be permitted to withdraw.

Objections to individual members under this rule are quite distinct from a plea to the jurisdiction of the court (as to which see Rule 34), though an objection may be equivalent to a plea to the jurisdiction of the court; as, for example, when an objection is made to the rank of the president, or when on the trial of a field officer one of the members is objected to because he is below the rank of captain. In such case the objection should be allowed, although it might be raised subsequently under Rule 34.

(B) This is because the prosecutor and judge-advocate do not form a part of the court.

(D) The witnesses cannot be examined on oath, as the court are not yet sworn, but Rules 82 and 83 will substantially apply.

(E) The object of the latter part of the paragraph is to secure a sufficient number of officers to determine the objections.

Other officers.—This excludes an officer from voting on his own case.

Present, i.e., who have not retired on the objection being allowed.

(F) An objection to the president is allowed, if allowed by one-third or more of the other officers appointed to form the court, and who have not retired. If the objection is allowed, the court must adjourn for the purpose of the appointment of another president. (See Rule 18 (B), and note.) The convening authority

must appoint another president, subject to the same right of the prisoner to object (Army Act, s. 51 (3), (4)), or must convene a new court. (Rule 18 (B).)

(G) *Directed to serve*.—This “prescribes,” under s. 51 (5) of the Army Act, the manner of filling a vacancy. It is the duty of the president to appoint one of the officers in waiting to fill a vacancy.

Proceed as directed by Rule 18.—That is, if the court are reduced in number below the legal minimum, they must adjourn for the purpose of the appointment of fresh members; and though not so reduced they should ordinarily adjourn unless they are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn.

(H) Inasmuch as paragraph (H) directs that the eligibility and absence of disqualification of an officer filling a vacancy are to be ascertained by the court, as in the case of other members, the court will ascertain that he is eligible and not disqualified under Rule 19, before the prisoner is asked whether he objects to him, but as this does not form part of the recorded proceedings, it may be done by the court in the case of officers in waiting at the same time as the inquiry under Rule 22, before the prisoner is brought before them. The prisoner will be asked whether he objects to the new officer, and if he does the objection will be dealt with, if he is junior to any other officer objected to, immediately, if not, after the objections to any other officers who are junior to him have been disposed of. He will, though objected to, have to vote on the objection to any other officer who is junior to him. The court should always in a doubtful case allow an objection, as it is very important that the court should not only be impartial, but be believed by the prisoner and his comrades to be so.

Swearing of
members.

26. As soon as the court is constituted with the proper number of officers who are not objected to, or the objections to whom have been over-ruled, the oath shall be administered to each member of the court as follows :—

- (i.) If there is a judge-advocate, the oath shall be administered by him to the president first, and afterwards to the other members of the court;
- (ii.) If there is no judge-advocate, the oath shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already sworn.

The form of oath is set out in s. 52 (1) of the Army Act.

See Appendix II, Form of Proceedings, para. (2), p. 726.

As to mode of swearing, see note to Rule 30.

The oath may be administered to each member separately, or to two or more members collectively. Peers are sworn as other members.

A solemn declaration may be substituted for an oath under the circumstances specified in the Army Act, section 52 (4).

As to swearing the court to try several prisoners, see Rule 71.

Swearing of

27. After the members of the court are all sworn, an

oath shall be administered to the following persons, or to such of them as are present at the court-martial, by the president, or by some member of the court, or, except in the case of the judge-advocate, by the judge-advocate, if present, in the following form :—

(A) The form of oath for the judge-advocate shall be :

“You do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.”

(B) The form of oath for an officer attending for the purpose of instruction shall be :

“You do swear that you will not divulge the sentence of this court-martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.”

(C) The form of oath for a shorthand writer shall be :

“You do swear that you will truly take down to the best of your power the evidence to be given before this court-martial, and such other matters as you may be required, and will, when required, deliver to the court a true transcript of the same. So help you God.”

(D) The form of oath for an interpreter shall be :

“You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you God.”

See Army Act 52 (2), and note to Rule 30.

For Form see Appendix II. Form of Proceedings, para. (2), p. 726.

A solemn declaration may be substituted under the circumstances specified in the Army Act, s. 52 (4).

28. Where a person is permitted to make a solemn declaration instead of being sworn, the form of declaration shall be as follows ; that is to say :

(A) In the case of the president or other member of the court :

I, _____, do solemnly promise and declare that I will well and truly try the prisoner before the court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and I do further solemnly promise and declare that I will not divulge the sentence of

judge-advocate and other officers.

Substitution of solemn declaration for oath.

the court until it is duly confirmed, and further that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(B) In the case of the judge-advocate :

I, _____, do solemnly promise and declare that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(C) In the case of an officer attending for the purpose of instruction :

I, _____, do solemnly promise and declare that I will not divulge the sentence of this court-martial until it is duly confirmed; and that I will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law.

(D) In the case of a shorthand writer :

I, _____, do solemnly promise and declare that I will truly take down to the best of my power the evidence to be given before this court-martial, and when required will deliver to the court a true transcript of the same.

(E) In the case of an interpreter :

I, _____, do solemnly promise and declare that I will, to the best of my ability, faithfully and truly interpret and translate as I shall be required to do touching the matter now before this court-martial.

(F) The declaration shall be taken before some person authorised by these rules to administer the oath.

Permitted to make a solemn declaration.—This is permitted under the circumstances specified in the Army Act, s. 52 (4).

Giving wilfully false evidence on solemn declaration is punishable both by a military and civil court precisely as if the evidence were given on oath. See Army Act, ss. 29, 126 (2).

In case a solemn declaration is taken, a note should be added to the proceedings, stating that the individual has taken a solemn declaration instead of being sworn.

Form of
oath in case
of trial of
several
prisoners.

29. When the oath is administered to or the declaration taken by the members of a court who are about to try several prisoners, the plural shall be substituted for the singular wherever required.

Several prisoners, see Rule 71.

30. (A) If any person desires to swear with uplifted hand in the form and manner in which an oath is usually administered in Scotland, he shall be permitted to do so. Swearing of person according to the form of his religion.

(B) In any case an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience.

(C) For the purpose of both (A) and (B) the words "You do swear" and "So help me God" may be omitted or varied.

The oath will usually be administered as follows:—the person to be sworn will take the book in his right hand ungloved. The person administering the oath will repeat the oath, and, on the repetition being ended, the person to be sworn will say the words "So help me God," and kiss the book. The words of the oath should be said with distinctness and solemnity by the person administering it.

The book must be the New Testament, or some book containing it. An oath taken on the Book of Common Prayer containing the Epistles and Gospels is properly taken, and a person violating the oath may be convicted of perjury.

In the case of a witness, it is well, in the interest of truth, to prevent subterfuges such as omitting the words "So help me God," or kissing the thumb instead of the book, as dishonest witnesses fancy that thus they escape the guilt of perjury.

If the above ceremonies are not in accordance with the religion of the person to be sworn, the ceremonies of his religion must be followed as provided by this rule. If he objects to take an oath, and the court are satisfied of the sincerity of the objection, or if he is objected to as incompetent to take an oath, and the court are satisfied that the oath has no binding effect on his conscience, the court should permit him to make a solemn declaration in the form directed by Rule 23, or in the case of a witness, Rule 81, Army Act, s. 52 (4).

A person desiring to be sworn in the Scotch form will swear standing and holding up his right hand, and the oath will be in these terms: "I swear by Almighty God, as I shall answer to God at the Great Day of Judgment, that" If a person has expressed his desire to be so sworn, no question as to his religious belief is to be asked, nor is he to be required to hold or kiss a Bible while being sworn. This provision is in accordance with the general law, 51 and 52 Vict., c. 46 (Oaths Act, 1888).

A Jew is sworn on the Old Testament, with his head covered. In the case of a Roman Catholic the book is closed, and a cross is marked on the cover. A Mahomedan is sworn on the Koran, sometimes kissing it or placing it on his head. In the case of natives of India, the form varies according to race, caste, and the part of the country, and it will be well to follow the practice of the civil courts of the district, and if they receive an affirmation instead of an oath, to receive such affirmation.

Prosecution, Defence, and Summing-up.

Arraign-
ment of
prisoner.

31. (A) After the members of the court and other persons are sworn as above mentioned, the prisoner shall be arraigned on the charges against him.

(B) The charges upon which the prisoner is arraigned will be read to him, and he will be required to plead separately to each charge.

(A) Arraigned.—See chapter V, paras. 49, 50.

The prisoner is usually arraigned by the president or the judge-advocate. For Form see Appendix II, Form of Proceedings, para. (3), p. 728.

Where two or more prisoners are tried together for the same offence, each is separately arraigned.

(B) The charge-sheet containing the charges as settled by the convening officer will be in the possession of the president, Rule 17 (E), who will lay the charge-sheet before the court immediately before arraignment, and the charge-sheet will then be annexed to the proceedings. If any charge appears to the prosecutor to require amendment he should communicate with the convening officer before the trial begins.

Objection
by prisoner
to charge.

32. The prisoner, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with these rules.

See Rules 9-12. For Form see Appendix II, Form of Proceedings, para. (3), p. 728. An objection to the jurisdiction of the court must be raised by way of special plea, Rule 34.

If it appears that the prisoner is by reason of insanity unfit to take his trial, the court will find the fact specially, and he will be dealt with as provided in s. 130 of the Army Act and in Rule 57.

Amend-
ment of
charge.

33. (A) At any time during the trial, if it appears to the court that there is any mistake in the name or description of the prisoner in the charge-sheet, the court may amend the charge-sheet so as to correct that mistake.

(B) If on the trial of any charge it appears to the court, at any time before they have begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority, and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the prisoner.

(A) A mistake in name or description will only be amended, if it is clear to the court that the prisoner is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made.

(B) The court may act under this paragraph whether the objection to the charge is taken by the prisoner or the judge-advocate, or by a member of the court, and either before or after the arraignment of the prisoner. (See Rules 23, 32.)

The witnesses.—That is, the witnesses on the substance of the charge, not witnesses as to objections to the officers, or with respect to a special plea to the jurisdiction.

If the addition, omission, or alteration can be met by means of a special finding under Rule 44 (as, for instance, by omitting some of the articles alleged to have been stolen or lost by neglect or by correcting a mistake in an immaterial date), it will not usually be necessary to have the charge amended; but if the date is material, or if the charge appears not to disclose an offence under the Army Act, or if any addition requires to be made to the charge, it will be safer for the court to adjourn and apply for the amendment of the charge.

34. (A) The prisoner, before pleading to a charge, may offer a special plea to the general jurisdiction of the court; and, if he does so, and the court consider that anything stated in such plea shows that the court have not jurisdiction, they shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and any address by the prisoner and reply by the prosecutor in reference thereto. Special plea to the jurisdiction.

(B) If the court overrule the special plea they should proceed with the trial.

(C) If the court allow the special plea, they shall record their decision and the reasons for it, and report it to the convening authority and adjourn; such decision shall not require any confirmation, and the convening authority shall either forthwith convene another court for the trial of the prisoner, or order the prisoner to be released.

(D) If the court are in doubt as to the validity of the plea, they may refer the matter to the convening authority, and may adjourn for that purpose, or may record a special decision with respect to such plea, and proceed with the trial.

(A) *May offer a special plea to the general jurisdiction of the Court.*—A plea to the general jurisdiction, that is to the right of the court generally, to try the prisoner on any charge at all, is here kept distinct from any plea which relates only to the particular charge on which the prisoner is brought before the court. Under the former he may plead, for example, that the court is improperly constituted, either in respect of the rank or number of the members, or that he is not amenable to the court, either as not being subject to military law or not subject to that description of court; as, for instance, in the case of a warrant officer being brought before a regimental court-martial. See above, note on Rule 23.

A plea relating to the particular charge, and raising the defence of previous conviction or acquittal by a court-martial or civil court, summary punishment by the commanding officer,

pardon of the offence or its condonation by the deliberate act of some superior authority, or the lapse of more than three years since the date of the offence, will be raised by way of plea in bar of trial, under Rule 36.

Evidence, when necessary, is heard in support of a plea to the jurisdiction, and if taken, must be taken on oath, like the evidence of other witnesses.

(B) The confirmation of the finding, after a plea to the jurisdiction is overruled, will, without any special mention, necessarily have the effect of confirming the decision of the court overruling the plea. If, on the other hand, the confirming officer thinks that the plea to the jurisdiction, although it was overruled, is valid, he must refuse to confirm the finding of the court; but inasmuch as the court must in that case be considered as having had no jurisdiction to try the prisoner, the prisoner, in strict law, will not have been tried at all, and can, therefore, still be tried for the alleged offence.

(C) If the court allow the plea, the convening officer cannot overrule the finding, inasmuch as to do so would be to compel the court to try the prisoner, and thus render its members liable to a possible action for damages (see chapter VIII, para. 40) after the expression of their own opinion that they had no jurisdiction. But the convening officer may convene another court.

(D) *May record a special decision.*—This in effect transfers the question to the decision of the confirming authority, who should act merely as if the plea had been overruled. See note to (B).

General plea
of "Guilty"
or "Not
guilty."

35. (A) If no special plea to the general jurisdiction of the court is offered, or if such plea, being offered, is overruled, the prisoner's plea—"Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")—shall be recorded on each charge.

(B) If a prisoner pleads "Guilty," that plea shall be recorded as the finding of the court; but, before it is recorded, the president, on behalf of the court, should ascertain that the prisoner understands the nature of the charge to which he has pleaded guilty, and should inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the prisoner ought to plead not guilty.

(A) *Plead intelligibly.*—If the prisoner pleads in some language not understood by the court, or inarticulately, he will not plead intelligibly, and a plea of not guilty will be entered.

(B) *Understands the nature of the charge.*—This direction is to prevent the prisoner pleading guilty under a misapprehension. For instance, a man charged with wilfully damaging his arms may, under a misapprehension, plead guilty, because the arms have been actually damaged, though not wilfully. In such a case the president must explain to him that if he did not do it wilfully, he must plead not guilty. So, again, on a charge for desertion, the plea "Guilty, but I intended to return" amounts

to a plea of "Not guilty," as the intention not to return is (except as mentioned in chapter III, para. 16) an essential element in the offence of desertion.

A plea of "Guilty" is only to be taken to the extent to which it is pleaded. Thus a man arraigned upon a charge of losing by neglect a number of articles, who pleads guilty in respect of some of these articles only, must be taken to have pleaded "Not guilty," as regards the remaining articles. A prisoner arraigned upon a charge of receiving property knowing it to have been stolen, who pleads guilty "except that he did not know it was stolen," must be dealt with as having pleaded not guilty. So as regards any act of which the intention is an element, where the prisoner pleads guilty, but says that he "did not intend to do it," or words to that effect; so if the prisoner pleads guilty to two or more alternative charges, the president shall point out that he can only be guilty of one.

Generally, the president has, under this rule, the duty of advising the prisoner to withdraw a plea of guilty, if it appears from the summary of evidence that he ought to plead not guilty.

Difference in the procedure.—This is shown by Rule 37. Under that rule the prisoner, though able to call witnesses as to character, cannot call them in extenuation of the offence, except by leave of the court under Rule 37 (F) to prove what he alleges in mitigation of punishment. Consequently if he wishes, though admitting the offence, to show extenuating circumstances, he must plead not guilty, and cross-examine the witnesses for the prosecution, or call witnesses on his own behalf to prove the extenuating circumstances. See chapter V, para. 54.

It must be recollected, that there is nothing untrue in a prisoner pleading not guilty, even though he committed the offence, as the plea merely amounts to an expression of desire to have a formal trial.

For example, if a man admits that he struck his non-commissioned officer, but wishes to show that it was done under circumstances of very great provocation, and does not therefore deserve severe punishment, he must plead not guilty; as if he pleads guilty he will not be able, either by cross-examination of the prosecutor's witnesses or by calling witnesses on his own behalf, to show the existence of such provocation, save as above mentioned under Rule 37 (F).

36. (A) The prisoner at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence, may offer a plea in bar of trial on the ground of having previously been convicted or acquitted by a competent civil court or a court-martial of the offence, or of having been dealt with summarily by his commanding officer for the offence, or of the offence having been pardoned or condoned by competent military authority, or of the offence having been committed more than three years ago. Plea in bar.

(B) If he offers such plea in bar the court shall record it as well as his general plea, and if they consider that any fact or facts stated by him are sufficient to support the plea in bar they shall receive any evidence offered, and hear any address made by the prisoner and the prosecutor in reference to the plea.

(c) If the court find that the plea in bar is proved they shall record their finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the prisoner, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the prisoner on that charge.

(d) If the finding that a plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.

(e) If the court find that a plea in bar is not proved, they shall proceed with the trial, and the said finding shall be subject to confirmation like any other finding of the court.

The Army Act provides that a man shall not be liable to be tried for an offence of which he has been convicted or acquitted by a court-martial (s. 157), or by a civil court (s. 162 (6)), or for which he has been dealt with summarily by his commanding officer (s. 46 (7)), or which (with the exceptions of mutiny, desertion, or fraudulent enlistment) was committed more than three years before the date of the trial (s. 161).

This rule enables him to raise any of the above defences, as well as the defence of pardon or condonation, by way of a plea in bar of trial.

If the court find that the plea in bar is proved, they must adjourn, unless there is some other charge against the prisoner which is not affected by the plea, and if the finding is confirmed, the prisoner will not be tried.

If the court find that the plea in bar is not proved, they will proceed with the trial, but this finding will be subject to confirmation.

Procedure
after plea of
"Guilty."

37. (A) Upon the record of the plea of "Guilty," if there are other charges in the same charge-sheet to which the plea is "Not guilty," the trial will proceed with respect to those other charges; but if they are alternative charges, the court may either proceed with respect to all the charges as if the prisoner had not pleaded "Guilty" to any charge, or may, instead of trying him record a finding of "Not guilty," on each alternative charge to which the prisoner has not pleaded "Guilty."

(B) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the court shall receive any statement which the prisoner desires to make in reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, and if there is no such summary or abstract, shall take and record sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence.

This evidence will be taken in like manner as is directed by these Rules in the case of a plea of "Not guilty."

(c) After that evidence is taken, or the summary or abstract of evidence is read, as the case may be, the prisoner may make a statement in mitigation of punishment (but no other address will be allowed), and may call witnesses as to his character.

(d) If from the statement of the prisoner, or from the summary or abstract of evidence, or otherwise, it appears to the court that the prisoner did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty," and proceed with the trial accordingly.

(e) If a plea of "Guilty" is recorded, and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under (b) and (c) will take place when the findings on the other charges in the same charge-sheet are recorded.

(f) When the prisoner at any court-martial states anything in mitigation of punishment which in the opinion of the court requires to be proved, and would, if proved, affect the amount of punishment, the court may permit the prisoner to call witnesses to prove the same.

(A) For instance, in the illustration of charge in Appendix I, p. 703, the charges are not alternative, and therefore if the prisoner pleads guilty to one charge and not guilty to the other charge the court should proceed to try him on the remaining charge. In the case of alternative charges a man cannot be guilty of all of them. For example, in Form 58, p. 716, he cannot have committed the offence of making away with, and also of losing by neglect, the same articles of his regimental necessaries. If, therefore, he pleads guilty to one charge, the court should usually enter a finding of not guilty on the other, as inconsistent with the one to which he has pleaded guilty; but if the summary of evidence shows clearly that he made away with, and he pleads guilty only to losing by neglect, the articles, the court should try him for the making away with his necessaries, inasmuch as it is a more serious offence than losing by neglect, and a soldier ought not by pleading guilty to the smaller offence to escape punishment for the greater.

(B) and (D) *Any statement.*—If it appears from this statement or otherwise that the prisoner did not understand the effect of his plea of "Guilty," it will be the duty of the court to record a plea of "Not Guilty," and to proceed with the trial. (See notes to Rule 35.) Or, again, if he alleges very great provocation for the offence, it may be desirable to record a plea of "Not guilty" in order to allow the existence of such provocation to be proved in the ordinary way.

If a court fail to observe this rule and treat such a plea as mentioned in the note to Rule 35 (B), in the case of desertion, as a plea of "Guilty," the confirming officer should refuse confirmation; he can then order a new trial. See ss. 54 (6), 157, and notes. If he confirms, the whole proceedings are nevertheless invalid.

(M.L.)

In the case of a plea of "Guilty," the prisoner will always be asked whether he has any witnesses to call as to character, see (C).

For Form see Appendix II, Form of Proceedings, para. (4), p. 729.

If evidence is taken under (B), the prisoner can cross-examine the witnesses both in extenuation of the offence with a view to the mitigation of punishment, and as to character. See Rule 39, and for Form, see Appendix II, Form of Proceedings, paras. (4) and (5), pp. 729, 731.

(C) It will be observed that the prisoner cannot, except by permission of the court under (F), call witnesses in extenuation of the offence and consequent mitigation of punishment.

(F) The court should always, if the prisoner requests it, allow witnesses to be called, to prove any statement made by him in mitigation of punishment.

Withdrawal
of plea of
"Not
guilty."

38. The prisoner may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty," and plead "Guilty," and in such case the court will at once, subject to a compliance with Rule 35 (B), record a plea and finding of "Guilty," and shall, so far as is necessary, proceed in manner directed by Rule 37.

If the prisoner proposes to withdraw his plea of not guilty, the court must inform him of the general effect of his withdrawal, and of the difference in the procedure, in the same manner as if he pleaded guilty under Rule 35.

Plea of
"Not
guilty" and
case for the
prosecution.

39. After the plea of "Not guilty" to any charge is recorded, the trial will proceed as follows:—

(A) The prosecutor may, if he desires, make an opening address.

(B) The evidence for the prosecution shall then be taken.

(C) If it should be necessary for the prosecutor to give evidence for the prosecution, he should give it after the delivery of his address, and he must be sworn, and give his evidence in detail.

(D) He may be cross-examined by the prisoner, and afterwards may make any statement which might be made by a witness on re-examination.

For Form see Appendix II, Form of Proceedings, para. (5), p. 731.

(A) In cases of any complication, such as cases of embezzlement, the prosecutor should always make an opening address for the purpose of explaining the charge, and enabling the court better to follow the evidence. This is the only object of the address. As a rule the address of the prosecutor should be in writing. See further Rule 60, and note.

(B) As to the evidence, see Rules 80, to 85. The evidence will be taken by question and answer, Rule 82.

All facts essential to constitute the offence charged must be proved; e.g., on a charge of making false accusations, &c., it is necessary to prove—

- (1) That the accusation was made against an officer or soldier by the prisoner ;
- (2) That it was false ;
- (3) That the prisoner made it knowing it was false.

Respecting the duty of the president, see Rule 59, and note.

(C) The prosecutor should never himself give evidence unless it be to prove a date or other formal matter, or produce documents ; but even formal matter should not be left to be proved by him, if it can possibly be helped. The production of documents which are in his possession is not open to the same objection.

The only possible exception to the rule of the prosecutor not giving evidence will be occasionally on active service, where the trial cannot be postponed, and the same officer is a material witness and also the only available officer for the duty of prosecutor. In these exceptional cases, it is essential that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. Consequently he must give his evidence before any other witness, and in detail, and must not, after delivering an address, be allowed to swear generally to the statements contained in it.

Documentary evidence will be read by the judge-advocate, or by the president, or by some member of the court, and will be entered on the proceedings.

When counsel appears on behalf of the prosecutor, (C) and (D) do not apply. See Rule 88 (D).

40. (1) At the close of the evidence for the prosecution, the prisoner will be asked if he intends to call any witnesses other than witnesses as to character.

(2) If the prisoner does not state that he intends to call any witnesses other than witnesses as to character, the procedure will be as follows ;—

- (A) The prosecutor may address the court a second time, for the purpose of summing-up the evidence for the prosecution.
- (B) The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.
- (C) The prisoner may call witnesses as to his character.
- (D) The prosecutor may produce in reply to the witnesses as to character, proof of former convictions and entries in the defaulters' book, but he may not again address the court.

(1) The question to the prisoner as to the calling of witnesses will be put by the judge-advocate, or, if there is none, by the president. The court, in asking the prisoner as to his witnesses, must inform him of the difference between witnesses in general, and witnesses as to character only, and in particular must explain, that if he wishes to produce any evidence in extenuation of the offence with a view to the mitigation of punishment, he will not be able to do so if he only calls witnesses as to character. For Form see App. II, Form of Proceedings, para. (6), p. 733.

(2) (A) The observations with respect to the opening address of the prosecutor (see note to Rule 60 (A)), apply equally to his

(M.L.)

Close of case for the prosecution and procedure for defence where prisoner does not call witnesses.

second address. In summing-up the evidence the prosecutor must confine his remarks to the evidence. He must not keep back or gloss over any of its weak points, and in fact should under-state rather than over-state that view of the facts which it is his duty to bring before the court on behalf of the prosecution; still less must he state any new fact relating to the case which has not been given in evidence. Any deviation in these respects on the part of the prosecution, or any want of moderation may lead to the proceedings being invalidated. The prisoner, on the other hand, has the privilege of making statements unsupported by evidence, and when those statements are made of his own knowledge they must be dealt with as evidence, although not given on oath. See note to Rule 43 (A).

(D) This evidence can only be adduced before the finding, in cases where the prisoner calls witnesses as to character, or obtains from the prosecutor's witnesses evidence of his good character.

Defence
where
prisoner
calls
witnesses,

41. If the prisoner states that he intends to call witnesses other than witnesses as to character, the procedure will be as follows :—

- (A) The prisoner will be asked if he has anything to say in his defence, and may address the court in his defence.
- (B) The prisoner may call his witnesses, including witnesses as to character.
- (C) After the evidence of all the witnesses for the defence has been taken, the prisoner may again address the court, and the time at which such second address is allowed is in these rules referred to as the time for the second address of the prisoner.
- (D) The prosecutor will be entitled to address the court in reply.

For Form see Appendix II, Form of Proceedings, para. (7), p. 735.

(A) The utmost liberty consistent with the interest of parties not before the court, and with the dignity of the court itself, should be allowed to the prisoner in making his defence (see Rule 60 (C)); and the court should, if necessary, adjourn to allow him time for its preparation. As to friend of prisoner and counsel, see Rules 86-93.

Summing-
up by judge-
advocate.

42. (A) The judge-advocate, if any, will, unless he and the court think a summing-up unnecessary, sum up in open court the whole case to the court.

(B) After the judge-advocate has spoken, no other address shall be allowed.

(A) The summing-up of the judge-advocate ought, like that of a judge to a jury, to be perfectly impartial. See Rule 102, (G), (H). In simple cases a summing-up is unnecessary; but even where the facts are simple, difficult questions may sometimes arise as to the particular offence which the acts constitute in law,

and in that case the judge-advocate should give his opinion on the legal point. The judge-advocate has, it will be observed, a right to sum-up whenever he considers a summing-up necessary. The summing-up need not be in writing.

If the summing-up is unnecessary, an entry to that effect must be made in the proceedings. See Appendix II, Form of Proceedings, para. (7), p. 735.

Finding and Sentence.

43. (A) The court will deliberate on their finding in closed court. Consideration of finding.

(B) The opinion of each member of the court will be taken separately on each charge.

(A) *Closed court.*—See Rule 63.

The president may commence the deliberation on the finding by a statement of the questions to be considered, and the order in which they are to be considered, and the bearing of the evidence on those questions, and other members of the court may comment on the evidence, and the truth or otherwise of the defence.

The great points for all the members to keep before their minds are (1) that according to one of the fundamental maxims of English law, a man is to be presumed innocent till he is proved guilty, and (2) that they have to find *according to the facts proved in evidence*; and to this end they must carefully separate mere statements made by the prosecutor or prisoner from facts proved by the respective witnesses. Some weight may, however, be allowed to a statement of the prisoner, which is corroborated incidentally or otherwise by evidence, especially if he has been unable to procure a witness who might have given evidence on the point.

Where the proceedings are voluminous, the judge-advocate should be prepared with such notes as may assist the members in referring to any particular part of the evidence. He will not offer any opinion except on legal points. (See Rule 102.)

It is competent to the court, if they think fit (see Rule 85 (D)), to call or recall a witness for the purpose of putting any question deemed essential; but any such witness must be examined in the presence of the parties, and all questions put to him, whether by a member of the court, the prosecutor, or prisoner, will be put through the president.

(B) As to taking opinions, see Rule 69, and note.

The opinions will be taken separately on each charge, and the court, if they think that the offence stated in any charge is not proved, must acquit the prisoner on that charge, irrespective of any other charge; but where the charges are *alternative*, the conviction under one necessarily involves an acquittal under the other charges, as, for instance, in the example in Form 58, among the further illustrations of charges, p. 716. If the prisoner is convicted under the charge of having made away with certain articles of his regimental necessities, he is necessarily acquitted of having lost them by neglect.

44. (A) The finding on every charge will be recorded, Form and record of finding.
and, except as mentioned in these rules, will be recorded

simply as a finding of "Guilty," or of "Not guilty," or of "Not guilty and honourably acquit him of the same."

(B) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner in his defence, they may, instead of a finding of "not guilty," record a special finding.

(C) The special finding may find the prisoner guilty on a charge, subject to the statement of exceptions or variations annexed to the finding.

(D) Where the court are of opinion as regards any charge that the facts proved do not disclose an offence under the Army Act, the court will acquit the prisoner of that charge.

(E) If the court doubt as regards any charge whether the facts proved show the prisoner to be guilty or not of an offence under the Army Act, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, and, if necessary, adjourn for that purpose.

(F) Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court shall record a finding of "Not guilty" on that charge; but if the court think that the facts so proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, then they may, either before recording a finding on those charges refer to the confirming authority for an opinion, and, if necessary, adjourn for the purpose, or they may record a special finding, stating the facts which they find to be proved, and stating that they doubt whether those facts constitute in law the offence in such one or another of the alternative charges as are specified in the finding.

(A) For form see Appendix II, Form of Proceedings, paras. (8) and (9), p. 738. Under s. 54 (3) of the Army Act, an acquittal on a charge requires no confirmation. For procedure where the finding is "Not guilty" on all the charges, see Rule 45. The finding of honourable acquittal may be recorded in the case of non-commissioned officers and privates as well as of officers, but is not to be recorded as a matter of course upon an acquittal. It is incorrect to honourably acquit a prisoner on a charge not affecting his honour.

Another case in which an honourable acquittal is incorrect is thus pointed out by the Duke of Wellington (Well. Desp., vol. 5, 221-2):—

"It is difficult and needless at present to define in what cases

"honourable acquittal is peculiarly applicable; but it must appear to all persons to be objectionable in a case in which any part of the transaction which has been the subject of investigation before the court-martial is disgraceful to the character of the party under trial. A sentence of honourable acquittal by a court-martial should be considered by the officers and soldiers of the army as a subject of exultation, but no man can exult in the termination of any transaction a part of which has been disgraceful to him; and although such a transaction may be terminated by an honourable acquittal by a court-martial, it cannot be mentioned to the party without offence, or without exciting feelings of disgust in others; these are not the feelings which ought to be excited by the recollection and mention of a sentence of honourable acquittal."

(B) For Form of special finding, see Appendix II, Form of Proceedings, para. (8), p. 738; and for Form of Acquittal, para. (9), p. 738. In case of immaterial variation, the finding may simply be recorded as "Guilty"; as, for example, if the prisoner is found to have made away with his regimental necessaries on the 25th, and not on the 26th of August, or to have made away with two pairs of boots, and not one pair of boots, the variation is immaterial, and he may simply be found guilty of the charge.

(C) Thus, if the court find that the facts stated in the charge are only proved in part, they may find the prisoner guilty, subject to the exceptions or variations. The facts, however, which they find to be proved, subject to the exceptions or variations, must amount to the substance of the offence actually charged, otherwise the court should acquit the prisoner. If, for example (see Form 58 among the further illustrations of charges, p. 716), they find that the prisoner made away with one brush, but not the pair of boots and the other brush, they may find the prisoner guilty, with the exception that he did not make away with the pair of boots and one brush. If, on the other hand, they find from the evidence that he did not make away with a pair of boots or two brushes, but did make away with other regimental necessaries, they must acquit the prisoner; or if they find that he lost the articles aforesaid, but did not make away with them by sale or otherwise, they must acquit him of the charge of making away with them. So again if he is charged with being absent without leave, and the particulars specify an absence from the 20th to the 30th of June, and the evidence prove an absence from the 21st to the 30th of June, the court may find the prisoner guilty with the variation of the 21st for the 20th. But if the evidence proves an absence from the 20th to the 30th of July, the difference is so material as to amount to a new charge, and the court must acquit the prisoner, and he can be tried on the new charge for the absence in July. See Rule 11 (D) note.

(D) If, for example, a man is charged with an act of a fraudulent character in taking money from a man under his command, and refusing to return it, and the court are of opinion that the acts which he did were not fraudulent, they must acquit him, inasmuch as the act of taking money and refusing to return it, if not fraudulent, would not amount to an offence.

(E) This paragraph provides that, where the court doubt as to whether the facts proved constitute in law the offence charged, the court may refer to the confirming authority. For instance, if they find that the prisoner took certain sums of money, but doubt whether the circumstances under which he took them do or do not constitute embezzlement, or an offence of a fraudulent

character, they may state the facts which they find proved, and refer to the confirming authority for an opinion as to whether they constitute the offence. The court, however, cannot refer to the confirming authority for any opinion as to the facts, but merely as to the legal results to which those facts amount.

(F) The special findings before mentioned relate only to the *particulars* in the charge. A special finding can in no case (except under s. 56 of the Army Act as mentioned below) alter the statement of the offence in the charge; but under this paragraph, if there are alternative charges, and the court doubt whether the facts proved amount in law to one charge or the other, and they do not think it advisable to refer to the confirming authority for an opinion, they can record a special finding, and thus leave it to the confirming authority under Rule 55 (A) to determine whether the facts found by the court constitute in law the one offence or the other. For example, if on a charge for insubordinate language, they find that the prisoner used the language charged, but doubt whether the language is such or was used under such circumstances as to be in law an offence within section 8 of the Army Act, they may record a special finding, setting out the language they find to be used, and the officer to whom, or the circumstances under which, it was used, and state that they doubt whether the use of the language under the circumstances is insubordinate or not. The confirming authority will then decide, under Rule 55 (A), whether such a finding amounts to a conviction on any of the charges.

The only other description of special finding which affects the statement of the offence is one not mentioned in the rules, but allowed by the Army Act (s. 56). That section enables a prisoner charged with an offence mentioned in the first column of the following table, to be found guilty of the offence of a similar character mentioned opposite to that offence in the second column of the table, where the evidence shows that the latter offence, and not the precise offence charged, has been in fact committed.

TABLE.

| A Prisoner charged with | May be found guilty of |
|---|--|
| (a) Stealing money or property. | Embezzlement, or fraudulently misapplying money or property. |
| (b) Embezzlement | Stealing, or fraudulently misapplying money or property. |
| (c) Desertion | Attempting to desert, or being absent without leave. |
| (d) Attempting to desert... | Desertion, or of being absent without leave. |
| (e) An offence committed under circumstances involving a higher degree of punishment. | The same offence as being committed under circumstances involving a less degree of punishment. |

For illustration of table, see note to s. 56 of Army Act.

Procedure
on acquit-
tal.

45. (A) If the finding on each of the charges in a charge-sheet is "Not guilty," the president will date and sign the proceedings, the findings will be announced in open court, and the prisoner will be released in respect of those charges.

(b) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted at once in like manner as is directed by these rules in the case where the findings require confirmation.

(A) *Announced in open court.*—This is required by Army Act, s. 54 (3).

For Forms see Appendix II, Form of Proceedings, para. (9), p. 738.

In respect of those charges.—Consequently the prisoner may be kept in custody and tried on the charges of any other charge-sheet, or on any other charge which is in course of investigation by his commanding officer.

(B) See Rules 50 and 96.

46. (A) If the finding on any charge is "Guilty," then for the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court, before deliberating on their sentence, may take evidence of and record the prisoner's character, age, service, and rank, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward, of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit. Procedure on conviction.

(B) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books respecting that prisoner, and identifying the prisoner as the person referred to in that summary.

(c) Evidence on the part of the prosecutor upon the above matters should not be given by a member of the court.

(d) The prisoner may cross-examine any such witness, and may call witnesses to rebut such evidence; and if the prisoner so requests, the regimental books, or a duly certified copy of the material entries therein, shall be produced; and if the prisoner alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if they find it is not in accordance therewith, shall cause the summary to be corrected accordingly.

(A) For Form see Appendix II, Form of Proceedings, para. (10), p. 739.

The court will always take evidence as to character, unless the circumstances render it impracticable so to do, in which case they will record the reasons for such impracticability in the proceedings.

It must be recollected that it is not competent for the court to take verbal evidence of the prisoner being a *bad* character. The

badness of his character must be proved by former convictions and entries in the defaulters' book, and not by the expression of any opinion to that effect by witnesses, although such opinion is admissible as evidence of good character. However, if the prisoner calls evidence of good character, the prosecutor may cross-examine those witnesses, with a view to test their veracity, and thereby indirectly bring out evidence of bad character.

Witnesses in favour of a prisoner's character will be called, as a rule, either as part of his defence, or after his address and before the finding; but under this rule (D) may be called to rebut the evidence given by the prosecutor after the finding.

In cases of alleged desertion, the fact of the prisoner having surrendered or been apprehended should not be left until after the finding; it is one of the material facts of the case, and as such ought to be proved by the prosecutor; it may have some bearing on the question of whether the prisoner intended or not to return.

The court will not, when the prisoner belongs to the regular forces, take evidence of any conviction while he was a civilian. But convictions by a civil court while the prisoner is a soldier may be given in evidence, although the offence was committed while he was in a state of absence or desertion. (Q.R., Sect. VI, para. 76.)

Evidence of expenses, loss, damage, or destruction will be taken in the course of the trial, as Rule 11 (F) provides that the facts justifying any deduction from pay are to be stated in the particulars. In case such evidence has not been taken, there is nothing to prevent the court taking it after the finding if necessary.

If two or more prisoners are convicted of a joint offence, each of them may be ordered to pay the whole amount of the compensation for any expenses, loss, damage, or destruction occasioned by that offence. Each of them is liable to pay the whole compensation in default of the other. If both contribute to the payment, proviso (b) to s. 138 of the Army Act (see note) will prevent either of them being charged with an undue amount, as that proviso forbids deductions more than sufficient to make good the compensation.

"*Military decoration*" is defined by the Army Act, s. 190 (18), to mean any medal, clasp, good conduct badge, or decoration; and "*military reward*" is defined (s. 190 (19)) to mean any gratuity or annuity, for long service or good conduct, and also to include any good conduct pay or pension, or any other military pecuniary reward.

Can sentence him to forfeit.—See Army Act, s. 44 (11), (12). The court cannot take evidence with respect to any decoration of which the court cannot order the forfeiture, as, for example, the Companionship of the Bath or the Victoria Cross. The object of taking this evidence and evidence of the rank of the prisoner is for the purpose of enabling the sentence to be awarded correctly. See Rule 47.

(B) *Regimental books.*—A statement containing a summary of the entries to the prisoner's name in those books, with a statement as to his age, service, rank, &c., is to be produced, and verified by a witness as being correctly extracted from the regimental books; a witness must also identify the prisoner as being the person referred to in such statement. This witness should usually be the adjutant or some other officer. If the prisoner challenges the correctness of the statement, the regimental books,

or a duly certified copy thereof, must be produced, and the court must compare the statement with the books. See (D).

(D) *Duly certified copy.*—This means a copy certified as provided by the Army Act, s. 163 (h), by the officer having custody of the book.

Any previous convictions of the prisoner may be proved by the production of a verbatim extract from the regimental books, certified by the officer in charge of those books (Army Act, s. 163 (g), Q.R., Sect. XXII). But a conviction by a civil court may be proved by the production of a certificate (Army Act, s. 164) of the conviction, and must be so proved if there is reason to doubt the correctness of the entry of the conviction in the regimental books. A witness must always be called to prove the identity of the prisoner with the person stated in the extract or certificate to have been convicted.

The witness producing the statement referred to in (B) and identifying the prisoner should be the adjutant or some other officer, and the witness may be cross-examined by the prisoner.

47. Where the court desire to sentence an officer to forfeit seniority of rank, they may sentence him to take rank and precedence in his corps, or in the army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence, bore the date of some day or days specified in the sentence, and later than the actual date of his said appointment.

Mode of
forfeiting
seniority of
rank of
officer.

See Army Act, s. 44f, and Rule 46.

Under this rule an officer whose commission as captain was dated on the 1st of January, 1893, may be sentenced to take rank in the army and in his regiment as if his commission bore date the 1st of March, 1895. If, for instance, it is wished to reduce a captain to the bottom of the list in his regiment he may be sentenced to take rank and precedence in his regiment and in the army as if his commission bore date on the day which is specified in the sentence, and which is the next day to the date of the commission of the junior captain of the regiment. If his rank in the army differs from that in his regiment the sentence may apply to the former only. See Appendix II, Form of Proceedings, para. (10), p. 739.

48. The court shall award one sentence in respect of all the offences of which the prisoner is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given.

Sentence.

For Form see Appendix II, Form of Proceedings, para. (10), p. 739.

The court will award such sentence as they think the prisoner ought to suffer, and the judge-advocate or president will enter it at once in the proceedings. For observations on the duty of the court in awarding sentence, see chapter V, paras. 78-88.

The object of the latter portion of this rule is to prevent legal

objections to the sentence. If, for example, the prisoner has been convicted on a charge of having made away with his regimental necessaries, which can only be punished with imprisonment, and also on a charge of desertion on active service or after a previous conviction, which is punishable with penal servitude, the court may pass a sentence of penal servitude, and that sentence will, under this rule, be valid because justified by the second charge, although not justified by the first charge. (See also Rules 54 and 55.) Assume that a prisoner charged with striking his superior officer and also with desertion is tried and found guilty of both charges, and sentenced to penal servitude for seven years. This rule directs that such sentence shall be deemed to have been given in respect of the second charge, which carries penal servitude as a punishment, and not in respect of the first charge, which carries only imprisonment as a punishment. But assuming that the first charge had carried penal servitude, as it would have done if the prisoner had been on active service, then the sentence would have been deemed to have been given in respect of both charges, and not in respect of the last only. This rule will apply whether the charges on which the prisoner has been tried are in one charge-sheet or in several charge-sheets.

With respect to the opinions on the sentence, see Rule 69 and the note thereon.

The sentence must, of course, be authorised by the Army Act (see s. 44); and the court cannot, for example, sentence a prisoner to restore stolen property; though an order for restoring property found in his possession may, under s. 75 of the Army Act, be made by the confirming authority or Commander-in-Chief.

Recommendation to mercy.

49. (A) If the court make a recommendation to mercy they shall give their reasons for such recommendation.

(B) If the court recommend any restoration of service under section 79 of the Army Act the recommendation, with the reasons for it, shall be entered in the proceedings.

(C) The number of opinions by which a recommendation mentioned in this rule, or any question relative thereto, is adopted or rejected, may be entered in the proceedings.

(A) A recommendation to mercy will be appended to the sentence, and be embodied in the proceedings before they are signed by the president. See Army Act, s. 53 (9), and note.

For Form see Appendix II, Form of Proceedings, para. (10), p. 739.

Signing and transmission of proceeding.

50. Upon the court awarding the sentence, the president shall date and sign the sentence, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation.

For Form see Appendix II, Form of Proceedings, para. (10), p. 739; and see Rule 96.

It is essential that the sentence be signed by the president, as under the Army Act, s. 68, the term of penal servitude or imprisonment commences on the day on which the sentence and

proceedings were signed by the president. His signature after the sentence will authenticate all the proceedings of the trial.

The judge-advocate (if any) will sign after the president.

As a rule, certified copies of original documents produced in evidence by the prosecutor, and not the originals themselves, will be annexed to the proceedings. Q.R., Sect. VI, para. 104.

Confirmation and Revision.

51. (A) In the case of a finding which does not require confirmation the confirming officer shall not make any remarks in the proceedings, but if he thinks that anything in the case requires further attention he shall report it to superior authority as directed by Her Majesty's regulations. Procedure of confirming officer.

(B) In the case of findings or sentences which require confirmation the confirming authority—

- (1) May direct the re-assembly of the court for revision of the finding or sentence, or either of them, stating the reasons for such revision ; and
- (2) Upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and may add any remarks on the case which such authority may think fit, and such confirmation and remarks shall be entered in and form part of the proceedings.

(A) As to remarks by confirming officer, see Q.R., Sect. VI, paras. 112, 113.

(B) The confirming authority can send back a finding and sentence, or either of them, for revision once, but not more than once ; and where the finding only is sent back for revision, the court have power, without any direction, to revise the sentence also (Army Act, s. 54 (2), Rule 52 (B)).

A finding of insanity, in which case there is no sentence, may be sent back for revision.

A confirming officer cannot send back a part of a finding or sentence for revision ; if he thinks that part only requires revision on account of invalidity or otherwise, he should return the whole, pointing out the part which he considers to require revision.

As under the Army Act, s. 54 (2), the confirming authority cannot recommend the increase of a sentence, nor can the court on revision for any reason increase the sentence previously awarded, the object of revision will be mainly either to cure defects in the proceedings of the court where the prisoner has been found guilty, or to give the court an opportunity of acquitting or passing a more lenient sentence on the prisoner. If, however, the sentence is wholly illegal, it is null (see note to Rule 56 (A)), and the court on revision have the same power of sentence as if they had passed no sentence at all ; as, for example, if a regimental court sentenced a soldier to be discharged with ignominy, or a court sentenced a serjeant to be reduced to the rank of lance-corporal, and the confirming officer sent back the

sentence for revision as being null, the court may pass a sentence of imprisonment or dismissal from the service.

See generally as to the duty of a confirming officer where the proceedings are illegal or irregular, Q.R., Sect. VI, para. 114.

Confirmation should be effected simply by the word "confirmed." The word "approved" should not be added. Any remarks, whether of approval, disapproval, or otherwise, should be added after the confirmation, and be separate from it. See Form in Appendix II, Form of Proceedings, para. (12), p. 745. In some cases they must be in a separate document. Q.R., Sect. VI, paras. 112, 113.

Original or revised.—"Original" here means the proceedings of the court where no revision has taken place, whether from the finding or sentence not having been sent back for revision, or from a revision not having taken place, in consequence of the dissolution of the court as mentioned in the note to Rule 52. "Revised" applies to the proceedings after the court have reassembled for revision.

The confirming officer can always withhold confirmation wholly or partly, and refer to superior authority (Army Act, s. 54 (5)), and he must so refer if he has been a member of the court-martial (s. 54 (4)).

Revision.

52. (A) Where the finding or sentence is sent back for revision, the court should re-assemble in closed court, and shall not receive any further evidence.

(B) Where the finding is sent back for revision, and the court do not adhere to their former finding, they shall revoke the finding and sentence, and record a new finding, and, if such new finding involves a sentence, pass sentence afresh.

(C) Where the sentence alone is sent back for revision, the court shall not revise the finding.

(D) After revision the president shall date and sign the decision of the court, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

(A) *Closed court*, see Rule 63. The court should re-assemble at the time mentioned in orders, which should be as soon as practicable.

As the court cannot receive any further evidence whatever, Army Act, s. 54 (2), they cannot hear any further address for either the prosecution or the defence.

When the court is assembled for revision, it is technically the same court. Consequently, if it is reduced by death, inability to attend, or otherwise, below the legal minimum (see notes to Rules 16-19), it is dissolved, and cannot re-assemble for revision, and the proceedings must be returned without any entry thereon to the confirming authority. Or, again, if the president is dead or unable to attend, a new president, if the senior member of the court is of sufficient rank, must be appointed by the convening authority. See s. 53 (2) of the Army Act.

(B) Where the finding is sent back for revision and the court adhere to the finding, they can nevertheless revise the sentence. See Army Act, s. 54 (2) and note to last rule.

If such new finding involves a sentence.—If the finding was insanity, or was an acquittal, no sentence will be involved. For Form see Appendix II, Form of Proceedings, para. (11), p. 745.

(D) For Form see Appendix II, Form of Proceedings, para. (11), p. 745. See Rule 96, and Q.R., Sect. VI, paras. 115, 117-119.

53. The charge, finding, sentence, and confirmation of a court-martial shall be promulgated in such manner as the confirming authority may direct; and if no direction is given, according to the custom of the service. Promulgation.

As to promulgation, see Q.R., Sect. VI, para. 116.

The finding of acquittal on all charges is directed by the Army Act, s. 54 (3), to be pronounced at once in open court. No further promulgation is required. In every other case the charge, finding, sentence, and confirmation must, under this rule, be promulgated. Consequently, if the finding on some of the charges is acquittal, and on others conviction, the finding of acquittal must be promulgated, together with the finding of conviction; and a finding of conviction, though not confirmed, will still be promulgated.

In the absence of any direction by the confirming authority, the usual custom of the service will be followed, but a written notice to the prisoner of the charge, finding, sentence, and confirmation will be sufficient promulgation to satisfy this rule.

As to the execution of sentence, see chapter V, paras. 100-3, and generally as to the disposal of prisoners, Q.R., Sect. VI, para. 165, *et seq.*

Under the Army Act, s. 53 (9), a recommendation to mercy must be promulgated and communicated to the prisoner, together with the finding and sentence. The confirming officer may direct observations recorded by him to be promulgated, either with the proceedings, or as he may think most desirable. Q.R., Sect. VI, para. 112.

If the sentence of a prisoner to penal servitude or imprisonment is confirmed, then, in default of any committal by superior authority, the commanding officer of the prisoner, as soon as may be after the promulgation of the sentence, will sign the order for committal of the prisoner to some prison in accordance with any general or special instructions he has received from superior authority. Q.R., Sect. VI, paras. 168, 175. As to commitment abroad, paras. 169, 176-178.

54. (A) Where a sentence has been awarded by court-martial in respect of offences in several charges, and the confirming authority confirms the finding on some but not on all of such charges, that authority shall take into consideration the fact of such non-confirmation, and shall, if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges the findings on which are confirmed. Mitigation of sentence on partial confirmation.

(B) Where a sentence has been awarded by a court-martial in respect of offences in several charges and has been confirmed, and any one of such charges or the finding thereon is found to be invalid, the authority having power

to remit or commute the punishment awarded by such sentence shall take into consideration the fact of such invalidity, and if it seems just, mitigate, remit, or commute the punishment awarded according as seems just, having regard to the offences in the charges which with the findings thereon are not invalid, and such punishment shall be as valid as if it had been originally awarded only in respect of those offences.

(c) Where a sentence passed by a court-martial has been confirmed, and is found from any reason to be invalid, the authority who would have had power to commute the punishment awarded by such sentence if it had been valid may pass a valid sentence, and the sentence so passed shall have the same effect as if passed by the court-martial, but the punishment awarded by such sentence shall not be higher in the scale of punishments than the punishment awarded by the invalid sentence, nor, in the opinion of the said authority, be in excess of the last-mentioned punishment.

(A) In the case of a man convicted on a charge of desertion after a previous conviction, and also on a charge of having made away with his regimental necessaries, and sentenced to penal servitude,—if the confirming officer confirms the finding on the second charge, but not that on the first charge, which justified the sentence of penal servitude, he is bound under this rule to commute the sentence to imprisonment. Otherwise the sentence would be in excess of what is justified by the finding which is confirmed, and therefore be invalid.

Again, if the second charge in the above case were striking an officer and the confirming officer refuses to confirm the finding on that charge while confirming the finding on the first charge, it will be his duty to consider whether the sentence of penal servitude is not too severe for the offence of desertion unaccompanied by aggravating circumstances, and if he thinks so, he will commute it to some less punishment. See generally, as to the duty of the confirming officer in the exercise of his powers of commutation or mitigation, Q.R., Sect. VI, para. 111.

(B) The object of this paragraph is to allow any permanent authority to do after confirmation what paragraph (A) allows to be done before confirmation, that is to say, to provide that if the Judge-Advocate-General or a court of law declares one of several charges to be invalid, the commuting authority may mitigate or commute the sentence, so as to make it a valid sentence in respect of any other charge which is valid.

(C) This paragraph enables the commuting authority to substitute a valid sentence for a sentence found after confirmation to be invalid.

Confirmation of finding on alternative charges.

55. (A) Where a special finding has been recorded in relation to alternative charges under Rule 44 (F), and the confirming authority is of opinion that the facts found by such special finding constitute in law the offence charged by any of such alternative charges, such authority may

confirm the finding, and in that case shall declare that the finding amounts to a finding of guilty on that charge ; but if it is afterwards declared by any authority having power to remit or commute the punishment awarded that the said facts constitute in law the offence charged in one of the other alternative charges, then the confirming authority, or such other authority as aforesaid, may declare that the finding amounts to a finding of guilty on that alternative charge ; and the finding shall be a valid finding of guilty on the charge specified in that behalf in the declaration made on confirmation, or, in case of a subsequent declaration, in that subsequent declaration.

(B) The sentence awarded in the case of any such special finding may likewise be confirmed, subject to this proviso, that if the offence in one of such alternative charges involves a higher punishment, or is otherwise graver, than the offence in the charge of which the prisoner is found to be guilty under the terms of any declaration mentioned in (A), the authority making the declaration, or some other authority having power to remit or commute the punishment awarded, shall remit or commute the punishment according as seems just, having regard to the last-mentioned offence ; and such punishment shall be as valid as if it had been originally awarded in respect of the last-mentioned offence.

(A) See note to Rule 44 (F).

For Forms see Appendix II, Form of Proceedings, para. (12), p. 745. The object of this rule, as already explained in the note to Rule 44 (F), is to prevent a miscarriage of justice in consequence of a difference of opinion as to the offence which is legally constituted by the acts committed by the prisoner. If, in such a case, the court-martial have recorded a special finding of the facts, it remains under this rule for the confirming authority, and ultimately for any authority having power to commute the punishment, to declare what offence in law the acts committed by the prisoner constitute. So that if the opinion of the confirming officer is eventually overruled by any superior authority, the finding will take effect accordingly in respect of the charge for the offence which the acts of the prisoner are declared by the superior authority to constitute.

(B) As respects the sentence, see note to preceding rule.

56. (A) If the sentence of a court-martial is informally expressed, the confirming authority may, in confirming the sentence, vary the form so that it shall be properly expressed ; and if the punishment awarded by the sentence is in excess of the punishment authorised by law, the confirming authority may vary the sentence so that the punishment shall not be in excess of the punishment authorised by law ; and the confirming authority may confirm the finding and the sentence as so varied of such court-martial.

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(B) Whenever it appears that a court-martial had jurisdiction to try a prisoner, and that the prisoner was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these rules or any defect or objection, technical or other, unless it appears that any injustice has been done to the prisoner; but nothing in this rule shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these rules.

(A) The object of this paragraph is to prevent the proceedings of courts-martial being rendered invalid, when they cannot be sent back for revision without great inconvenience to the public service. It will not exonerate from blame the presidents and members of courts-martial who pass sentences which are informal, or in excess of their powers, and confirming officers will, if practicable, send the finding and sentence back for revision, and if they act under this rule, will call the attention of the court to the informality or illegality of the sentence.

Under this paragraph the confirming authority may vary the form in which a sentence is expressed, but cannot amend a sentence wholly illegal; as, for example, if an officer convicted of disgraceful conduct were sentenced to dismissal, or if a soldier were sentenced by regimental court-martial to be discharged with ignominy, or if a non-commissioned officer were sentenced to be reduced to the rank of lance-corporal, or if a soldier not on active service were sentenced to summary punishment.

In any such case the confirming officer should treat the sentence as a nullity, and direct the court to re-assemble and pass a valid sentence. This proceeding would not be a revision of the sentence, so that the law prohibiting the increase of punishment on a revision would not apply, and the sentence in the case above mentioned of the officer might be cashiering, and of the non-commissioned officer might be imprisonment or reduction to the ranks.

Where, however, the punishment exceeds what is authorised by law, the confirming authority can, though such sentence is illegal, vary the sentence so as to bring it into conformity with law, and confirm it as varied.

(B) This paragraph will prevent a miscarriage of justice arising in consequence of defects in the procedure which do not affect the real merits of the case. These defects will usually be of a technical character, as any substantial defect, such as taking illegal evidence by accepting hearsay, or using a copy of a document where the original ought to have been produced, or calling a witness without proper notice to the prisoner, or refusing to admit evidence adduced by the prisoner, would ordinarily cause injustice to the person charged. As English law always resolves any doubt in favour of the prisoner, the court should never allow any technicality to interfere with the prisoner making his defence in the fullest manner, and while as a whole disregarding technicalities in favour of what they consider to be, in substance, fairness for the purpose of the trial, they must recollect that even

a disregard of a technicality may, in some cases, cause injustice, as the object of most technical rules is to prevent injustice. Before, therefore, a confirming officer, in reliance on this rule, confirms a finding and sentence in any respect irregular, he must take care to ascertain that no injustice, however small, has been done to the prisoner; and the preferable course is, where possible, to send the case back for revision or for another trial. In every such case the confirming officer will call the attention of the officer responsible for the irregularity to the deviation from the rule, or the defect in the proceedings; as officers will be held responsible for such deviation or defect, even though under this rule the conviction of the prisoner may be upheld.

It may be convenient to note here that if, after confirmation, the charges or the findings thereon are declared to be invalid, the trial must be treated as null, and consequently the prisoner must be relieved from all consequences of his conviction, and all record of such conviction must be erased; but in cases where the sentence alone is invalid the finding will stand good, and therefore the soldier convicted will suffer the forfeitures and other penalties which are consequential on conviction.

Where punishment is remitted, that remission, unless otherwise expressed, will not extend to forfeiture of service or good conduct pay, or to any forfeiture which he suffers by virtue of his conviction, without being sentenced to it. Q.R., Sect. VI, para. 114.

Insanity.

57. (A) Where the court find either that the prisoner is unfit, by reason of insanity, to take his trial, or that he committed the offence with which he is charged, but was insane at the time of the commission thereof, the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, if any, shall be at once transmitted for confirmation.

Provisions as to finding of insanity, and custody of insane person.

(B) If such finding is not confirmed, the prisoner may be tried by the same or another court-martial for the offence with which he was originally charged.

(C) Where such finding is confirmed, then until the directions of Her Majesty as to the disposal of such prisoner are known, or in the case of a prisoner unfit to take his trial, until any earlier time at which such prisoner is fit to take his trial, the prisoner shall be confined in such manner as may in the opinion of the proper military authority be best calculated to keep him securely without unnecessary harshness, as he is not to be considered as a criminal, but as a person labouring under a disease.

This rule supplements s. 130 of the Army Act, which requires a finding of insanity to be confirmed like any other finding. If, therefore, it is not confirmed, the trial of the prisoner must proceed in the ordinary course.

It is to be observed that two distinct cases are contemplated. A prisoner may have been sane at the time he committed the

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offence, but may not be sane enough to take his trial; while, on the other hand, a man insane at the time of committing the offence may have recovered sufficiently to take his trial. In the former case, if a prisoner, found not sane enough to take his trial, recovers before any directions of Her Majesty as to his disposal are known, he should be ordered for trial.

See Appendix II, Form of Proceedings, para. (9), p. 739.

General Provisions as to Proceedings of Court.

Seating of
members.

58. The members of a court-martial will take their seats according to their army rank, except that in the case of a regimental court-martial consisting entirely of officers of the same corps, they will take their seats according to their rank in that corps.

As to meaning of "corps," see Army Act, s. 190 (15).

Responsi-
bility of
president.

59. (A) The president is responsible for the trial being conducted in proper order and in accordance with the Army Act, and will take care that everything is conducted in a manner befitting a court of justice.

(B) It is the duty of the president to see that justice is administered, and that the prisoner has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a prisoner, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.

(A) The court should always have before them a copy of the Army Act, of the Queen's Regulations, and of the Rules of Procedure, and any other official books or orders relating to courts-martial which are necessary for the purpose of its proceedings.

If any person interrupts the proceedings of the court, the best course will ordinarily be to order him to be excluded from the court. The court have, however, under the Army Act, ss. 28 and 126, statutory powers for dealing with persons who interrupt the court.

Under those sections if a person is guilty of contempt of the court by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings, the court may proceed as follows:—If such person is subject to military law, they may commit him into military custody, and either order him to be tried by another court-martial, or may order him, after hearing or giving him an opportunity to make his excuse, to be imprisoned with or without hard labour for a period not exceeding twenty-one days; and in the latter case the president may, by order under his hand, commit him to prison.

If the offender is not subject to military law, the president may certify the offence to some civil court for the purpose of obtaining his punishment by such court. Army Act, s. 126 (3), and note.

It must be recollected that the trial of a prisoner cannot proceed in his absence, even though he interrupts the proceedings.

(B) The president should, like the judge in a civil court, act as

counsel for the prisoner, and he will therefore cause to be called before the court any witness, though not called either by the prosecution or the defence, whom he considers able to give material evidence to the court, and such witness may be cross-examined by the prosecutor and the prisoner. See Rule 78 (A) (B). He will also put to the witnesses any questions which appear to him necessary or desirable to elicit the truth, and will particularly take care that the prisoner does not suffer any prejudice in consequence of his inability to put proper questions to the witnesses, or in consequence of his not fully understanding the nature of the proceedings. He will examine the summary of evidence, and if a witness gives different evidence from what is there stated will cross-examine him as to the difference.

If there is a judge-advocate he has a similar duty. Rule 102 (G). The presence of a judge-advocate, however, does not relieve the president from the duty under this rule.

60. (A) It is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of, the prisoner.

Power of court over address of prosecutor and prisoner.

(B) The court may stop the prosecutor in referring to any matter not relevant to the charge then before the court, or any matter which the court is not investigating, and it is the duty of the court to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor.

(C) The court should allow great latitude to the prisoner in making his defence; he must abstain from any remarks contemptuous or disrespectful towards the court, and from coarse and insulting language towards others, but he may for the purposes of his defence impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject if he does so to any liability to further proceedings to which he would otherwise be subject. The court may caution the prisoner as to the irrelevance of his defence, but should not, unless in special cases, stop his defence solely on the ground of such irrelevance.

(A) The prosecutor is an officer for securing that justice is done, not a partisan to obtain a conviction, independently of the justice of the case (see chapter V, para. 57). Therefore he should prove, either by witnesses called for the purpose, or by the examination of his other witnesses, any facts which show the true character of the offence, whether they tend to aggravate or alleviate it, or to show the innocence of the prisoner, and he must be especially careful to prove any facts tending to show either the innocence of the prisoner, or to extenuate his offence. If, for example, the prisoner is charged with insubordinate language to his superior officer, and there are circumstances of provocation which, if proved, might mitigate the punishment, though not justifying an acquittal, the prosecutor should call evidence to prove those circumstances.

Again, many acts are only offences when done knowingly or with a certain intent. *Prima facie* it lies on the prosecution to show that the prisoner had the guilty knowledge which constitutes the offence; but absolute proof of guilty knowledge or intent is frequently impossible, and it can only be inferred from the circumstances. This inference the court is at liberty to draw, unless the prisoner produces evidence to rebut it; but in this, as in every other case, all facts which tend to show either the existence or the absence of the intent or knowledge on the part of the prisoner must be brought out by the prosecutor. For example, if the prisoner is charged with desertion, and the prosecutor is aware that though found in plain clothes, he had either received leave of absence, or leave to be in plain clothes, the prosecutor should prove that leave. So, too, if a soldier is charged with attempting to desert, and the evidence is that he went to a railway station and took a ticket for (say) Liverpool, and the fact is that several other soldiers in possession of passes took tickets for Liverpool at the same time, the latter fact should be brought out; as it gives a different complexion to the fact of taking a ticket, which of itself might be strong evidence against the prisoner.

The prosecutor must not introduce into the evidence against the prisoner any matters of aggravation which do not form part of the transaction in respect of which the prisoner is charged before the court, nor, as a rule, matters which, if true, are specific military offences with which the prisoner might be charged. If, for instance, he is charged with desertion, the prosecutor must not introduce, by way of aggravation, that he has been insolent or insubordinate, or that he had been previously drunk. On the other hand, if a soldier is charged with serious acts of insubordination, including violence to an escort, and the soldier was drunk, that fact should be brought out in the examination of the witnesses. Not only is the drunkenness part of the circumstances of the case, but it may modify the character of the offence. See chap. III, para. 31; Q.R., Sect. VI, para. 98.

If the trial is in consequence of the prisoner having claimed a court-martial instead of submitting to the jurisdiction of his commanding officer, that fact should be stated by the prosecutor. See Appendix II, Form of Proceedings, para. (3), p. 728.

(B) *Matter not relevant to the charge.*—What is and what is not relevant to any charge is in some cases a matter of considerable difficulty (see chap. VI, paras. 16-29); but, as there stated, in ordinary cases common sense will determine whether the matter referred to does or does not bear on the particular charge before the court.

Anything which tends to show that the prisoner committed the offence mentioned in the charge, or to show the true character of the offence (see note to (A)), is, ordinarily speaking, relevant.

(C) The right of the prisoner in making his defence is stated in this paragraph. If his charge against other persons of blame or criminality is made merely for the purposes of his defence, and is in any degree justified by the facts, he will not incur liability; but if his charges against others are wholly irrelevant to his defence, or if they come within the provisions of section 27 of the Army Act relating to false accusations, he is liable to be proceeded against accordingly. The court may caution him as to such liability, but should not do so, if there is any connection whatever between the charge and his line of defence. The case must be very special indeed to justify the court in stopping a

prisoner in his defence, or in excluding, on the ground of irrelevancy, evidence offered by him, or to justify any further proceedings against a prisoner on account of his defence.

Where a prisoner tried for desertion made in his defence statements reflecting on the officers of the regiment as the reason for the prevalence of crime in the regiment, it was held that the defence, although the statements in it were eventually proved to be false, was not wholly irrelevant, as the prisoner might have hoped that the statements would lead to a mitigation of his punishment; and it was also held that the proper course was, not to try the prisoner again for the purpose of ascertaining the truth of his statements, but to hold a court of inquiry for that purpose.

61. Where two or more prisoners are tried together and any evidence is tendered by any one or more of the prisoners, the evidence and addresses on the part of all the prisoners will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards all the prisoners.

Procedure on trial of prisoners together.

See note to Rule 71 (C).

62. (A) Where the convening officer directs any charges against a prisoner to be inserted in different charge-sheets, the prisoner shall be arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the prisoner.

Separate charge-sheets.

(B) The trials upon the several charge-sheets shall be in such order as the convening officer directs.

(C) When the court have tried the prisoner upon all the charge-sheets they shall, in the case of the finding being "Not guilty" on all the charges, proceed as directed by Rule 45, and, in case of the finding on any one or more of the charges being "Guilty," proceed as directed by Rules 37 and 46 to 50, both inclusive, in like manner in each case, as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

(D) If the convening officer directs that, in the event of the conviction of a prisoner upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such event may, without trying the prisoner upon any of the subsequent charge-sheets, proceed as directed by (C).

(E) Where a charge-sheet contains more than one charge, the prisoner may, before pleading, claim to be tried separately in respect of any charge or charges in

that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately; and in such case the court, unless they think his claim unreasonable, shall arraign and try the prisoner in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

(F) If the prisoner pleads "Guilty" to a charge in a charge-sheet, and the trial does not proceed (as mentioned in Rule 37 (A)) with respect to the other charges in that charge-sheet, the court shall, subject to the directions of the convening officer, proceed to try the prisoner on the charges in the next charge-sheet before they proceed as directed by Rule 37 (B) and (C).

(A) Most of the ordinary cases which come before courts-martial are so simple in their facts that a prisoner is not embarrassed by being tried at the same time for several charges; but embarrassment will certainly arise if the facts of any of the charges are very complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different offences. In such cases, even practised advocates and judges find a great difficulty in keeping the different charges and the evidence on each charge distinct, and still more will the difficulty be felt by an uneducated prisoner, and by a court not constantly accustomed, like a civil court, to deal with evidence.

In such cases, therefore, as a general rule, the convening officer should cause the charges to be inserted in separate charge-sheets.

The cases which are likely to arise may be classified as follows:—

Case No. 1. (Single offence repeated on different days.) The first case arises where the prisoner has been guilty of the same description of offence on two or more different days. For example, a soldier steals from a comrade a watch on Monday, a pair of shoes on Tuesday, a pair of stockings on Wednesday, and so forth. Supposing he had stolen all these articles at the same time, it would have constituted the same offence, but if he steals them on separate days, the offences are obviously distinct.

Case No. 2. (Several offences forming part of one wrongful transaction.) A more difficult case arises where the set of acts of which a prisoner has been guilty are in fact part of one wrongful transaction, so to speak, and yet involve several military offences of different descriptions.

For instance, a soldier, being drunk, uses insubordinate language to his serjeant, knocks him down and then runs away. He commits four offences: (1) the offence of drunkenness; (2) the use of insubordinate language to his superior officer; (3) the striking his superior officer; (4) desertion, or absence without leave.

Case No. 3. (Several offences, not forming part of the same wrongful transaction.) Another case arises where several offences of different descriptions have been committed by the same person, but at different times. For example, suppose that in the preceding case the desertion, or absence without leave, had taken place some time after the commission of the two previous offences, and in such manner that they could not be deemed part of the same wrongful transaction.

In case No. 1, the offences being of the same description, may, as a general rule, be contained in the same charge-sheet; but many offences of the same description should not be inserted in the same charge-sheet, as to do so might embarrass the prisoner in his defence. Usually it will be undesirable to insert more than three charges for offences of the same description in the same charge-sheet, unless the offences have been part of a system, as, for instance, a system of embezzlement carried on by the prisoner, in which case it may not be improper to increase the number of charges.

In case No. 2, four offences constitute one wrongful transaction, and therefore may be included in the same charge-sheet; but if they are so included, the prisoner must not at the same time be charged in the same charge-sheet with any previous offence of the same description; as, for instance, any previous offence of striking his superior officer, or of desertion, &c.

In case No. 3, if the prisoner is charged both with striking his superior officer and with desertion, or absence without leave, the latter offence should not be included in the same charge-sheet as the former.

In practice, in such an instance as, case No. 2, the serious offences of striking a superior officer and of desertion or absence without leave, should alone be charged.

Indeed, it is advisable as far as possible to avoid charging a prisoner with more than one offence, as a multiplicity of charges leads to unnecessary trouble and confusion; and if the gravest of several offences is selected, the punishment will in all probability be sufficient to satisfy the ends of justice. It may, however, in some cases be necessary to prove several offences, in order to guide the court as regards the proper amount of punishment.

Assuming that it is doubtful whether one or more of a set of offences can be proved, it will of course be advisable to omit any offence the evidence with respect to which is doubtful, and to bring before the court those charges only of which the proof appears to be sufficient.

The result of the above remarks is as follows (see also note, p. 688) :—

(i) Repeated instances of the same description of offence may be included in the same charge-sheet, though each instance must constitute a separate charge.

(ii) Offences of different descriptions should be included in separate charge-sheets, except where they form part of the same wrongful transaction.

(iii) If offences of different descriptions are included in one charge-sheet as forming part of one wrongful transaction, any act other than an act which forms part of that wrongful transaction should not be charged as an offence in the same charge-sheet.

(iv) Where one offence has in fact been committed, but doubt arises as to what particular description of offence has been committed, one charge-sheet may include charges for offences of different descriptions, but each charge will refer to the same set of particulars.

(B) The convening officer will regulate the order for the trial of different charge-sheets according to the gravity of the offence and the convenience of summoning the witnesses, or other circumstances. It is desirable to try first the gravest offence, as, if the prisoner is convicted, he will be sufficiently punished without trying him on the minor offences. In some cases, it may be

better to try a prisoner on a simple case first, so as to avoid the necessity, if he is convicted upon that, of trying him for an offence where the case is complicated, and the number of witnesses is large.

(C) It will be observed, that the separation of charges in different charge-sheets is merely for the purpose of enabling the court and the prisoner to keep distinct in their minds the different cases and the evidence thereon, with a view to the prisoner making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases; and that the result, when the time for sentence is reached, is the same as if the prisoner had been tried at the same time on all the charge-sheets. Unless, therefore, the convening officer directs under (D) that the prisoner need not be tried upon the subsequent charge-sheets, the court will not sentence the prisoner until they have disposed of all the charge-sheets, and will then award one sentence in respect of all the charges contained in the different charge-sheets of which the prisoner has been found guilty.

(D) It will often be unnecessary, if the prisoner is convicted of a grave charge contained in one charge-sheet, to proceed with any other or minor offences contained in the different charge-sheets. It may, however, in some cases be necessary to try the prisoner on a subsequent charge-sheet, in order to justify a more severe sentence for the offence charged in the first charge-sheet.

(E) The court should always, unless they think the claim very unreasonable, accede to a demand to be tried separately in respect of any particular charge.

(F) The object of this is only to provide that all the charge-sheets should be disposed of before the court proceed to sentence the prisoner; in the case of "Not guilty," this is provided for by (C).

Sitting in
closed court.

63. (A) When a court-martial sit in closed court on any deliberation amongst the members or otherwise, no person shall be present except the members of the court, the judge-advocate, and any officers under instruction; and the court may either retire or may cause the place where they sit to be cleared of all other persons not entitled to be present.

(B) Except as above-mentioned, all the proceedings, including the view of any place, shall be in open court and in the presence of the prisoner.

(A) *Cleared*.—See Army Act, s. 53 (5).

(B) *Shall be in open court*.—This does not control the power of the court to exclude a person who interferes with the proceedings—a power incident to every court as necessary for the proper conduct of the proceedings, though it does not extend to the exclusion of the prisoner, as the trial cannot proceed in his absence.

View.—See Army Act, s. 53 (7). All the members must proceed to view any place, and the prisoner must be present there; usually the court will adjourn for the purpose to the place to be viewed.

Time for
trial.

64. (A) A court-martial may sit at such times and for

such period between the hours of six in the morning and six in the afternoon, as may be directed by the proper superior military authority, and so far as no such direction extends, as the court from time to time determine.

(B) If the court consider it necessary to continue a trial after six in the afternoon they may do so, and if they do so should record in the proceedings their reason for so doing.

(C) In cases requiring an immediate example, or when the convening officer, or the general or other officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour.

(D) If the court or the convening officer, or other superior military authority, think that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, the court may sit accordingly, but otherwise the court should not sit on any of those days.

(A) See Q.R., Sect. VI, para. 102, and next rule and note.

(C) This certificate should be annexed to the proceedings.

(D) The reason for sitting should be annexed to the proceedings.

65. (A) When a court is once assembled and the prisoner has been arraigned, the court should (but subject to the provisions of the Army Act, and of these rules as to adjournment) continue the trial from day to day and sit for a reasonable period on every day, unless it appears to the court that an adjournment is necessary for the ends of justice, or that such continuance is impracticable.

Continuity
of trial and
adjourn-
ment of
court.

(B) A court-martial in the absence either of a president, or of a judge-advocate (if a judge-advocate has been appointed for that court-martial), shall not proceed, and if necessary shall adjourn.

(C) The senior officer on the spot may also, for military exigencies, adjourn or prolong the adjournment of the court.

(D) Any adjournment may be made from place to place as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment will be until further orders from the proper military authority; if the place to which such adjournment is made is not specified, the adjournment will be to the same place or to such place as may be specified in further orders from the proper military authority.

(A) *Subject to the provisions, &c.*—The Army Act, s. 53 (6), authorises the court to adjourn from time to time without any restriction. It is, however, very important, that a trial by court-

martial once begun, should proceed with strict regularity and without interruption to its conclusion. This rule, therefore, requires the court to sit continuously from day to day, unless it is impracticable to do so, or unless an adjournment is necessary for the ends of justice.

Thus the court may adjourn on account of the illness of the prisoner, or for the purpose of viewing any place, or of securing the attendance of witnesses (see Rule 79), or of obtaining evidence from recusant witnesses, or of obtaining the opinion of the Judge-Advocate-General, or for reference to the convening or confirming officer on any question, or for any purpose, if the court are of opinion that such adjournment is necessary for the ends of justice. (See note to Rule 76.)

The court, however, should not as a rule permit an adjournment for the purpose of obtaining further evidence on the part of the prosecution, and should only adjourn for the production of evidence for the prisoner, where they consider that he has not previously had sufficient opportunity for procuring his witnesses, or where it would be unjust to the prisoner not so to adjourn. Great care, therefore, must be taken both by the prosecutor and by the prisoner to have ready at the trial all the witnesses and documents they desire respectively to produce. The court should adjourn, if an adjournment is requested by the prisoner to prepare his defence, by the prosecutor to prepare his reply, or by the judge-advocate to prepare his summing-up.

In the event of the illness of a member, the court may, if not reduced below its legal minimum, either proceed without him, or adjourn, as they think proper; but if reduced below the legal minimum, Rule 66 applies.

When a court adjourns before the conclusion of the trial, the adjournment is to be entered in the proceedings (see Appendix II, Form of Proceedings, para. (5), p. 731), and either announced in court in the presence of the prisoner, or communicated to the prosecutor and prisoner.

Rules as to adjournment.—See Rules 14, 18, 22 (C), 23 (B), 33 (B), 34 (C), (D), 44 (E), (F), 65 (B), (C), (D), 67, 76, 79, 101.

Reasonable period.—Sittings of six or seven hours will be found, as a rule, quite long enough, and they should not be further protracted without some special reason. Q.R., sect. VI, para. 102. Too long sittings unduly strain the attention of the members, and may operate unfairly to the prisoner, as at the close of a long sitting he cannot properly make his defence.

Every day, i.e., except Sunday, &c., see Rule 64 (D).

(B) *In the absence of a president.*—If the president dies, or is unable to attend, the convening authority may appoint the senior member of the court (being of sufficient rank) to be president, assuming the court not to be reduced below the legal minimum. If he is not of sufficient rank, the court will be dissolved. Army Act, s. 53 (2). Where the inability of the president to attend is merely temporary, no new appointment will be necessary, and the court will adjourn till he is able to attend. The senior member will always report the fact of the death or inability to attend of the president to the convening authority. Rule 66 (A).

(C) *Military exigencies.*—These can seldom occur, except on active service.

(D) *From place to place.*—This meets the case of a view, as well as of a court-martial held on the line of march; also the case of adjournment to the quarters of a sick witness, for the purpose of taking his evidence.

66. (A) Where, in consequence of anything arising while the court are sitting, the court are unable by reason of dissolution (as specified in section 53 of the Army Act, or otherwise), or of the absence of the president, to continue the trial, the president, or in his absence, the senior member present, will immediately report the facts to the convening authority. Suspension of trial.

(B) Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the prisoner may be tried before another court-martial.

(A) *While the court are sitting.*—Anything which occurs while the court are not sitting will usually be reported in some other way to the convening authority; if not it should be reported as directed by this rule.

By dissolution.—A court is dissolved if, after the commencement of the trial, the court is by death or otherwise reduced below the legal minimum (see notes to Rules 16–18), or if on account of the illness of the prisoner before the finding (see next rule) it is impossible to continue the trial, or if on the failure of the president a new president cannot be appointed. Army Act, s. 53 (1) (2), (3).

Senior member.—That is, according to the rank in which they take their seats. See Rule 58.

For Form see Appendix II, Form of Proceedings, para. (5), p. 731.

67. In case of the death of the prisoner or of such illness of the prisoner as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority. Proceeding on death or illness of prisoner.

See Army Act, s. 53 (3).

This evidence will be taken on oath, or solemn declaration, in the same manner as on the trial.

68. (A) A member of a court who has been absent while any part of the evidence on the trial of a prisoner is taken can take no further part in the trial by that court of that prisoner, but the court will not be affected except as provided by section 53 of the Army Act. Presence throughout of all members of court.

(B) An officer cannot be added to a court-martial after the prisoner has been arraigned.

(A) *Except as provided*, that is, unless it is reduced below the legal minimum, and so dissolved under s. 53 of the Army Act.

(B) *Arraigned.* See ch. V, para. 49.

69. (A) Every member of a court must give his opinion on every question which the court has to decide, and must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal. Taking of opinions of members of court.

(b) Subject to the provisions of the Army Act, every question shall be determined by an absolute majority of the opinions of the members of the court, and in the case of an equality of opinions the president's second or casting vote will be reckoned as determining the majority.

(c) The opinions of the members of the court should be taken in succession, beginning with the junior in rank.

(B) *Absolute majority.*—Otherwise, a punishment might be imposed by a minority. For instance, if the punishment proposed by four members was penal servitude, by three imprisonment, and by two a forfeiture, the penal servitude might be imposed, although five members were opposed to it.

In order to obtain the absolute majority, it will be desirable, first to take the opinion of the members of the court as to the nature of the punishment to be awarded, that is to say, penal servitude, imprisonment, cashiering, forfeiture, or other punishment.

Where opinions differ as to the nature of punishment, the most lenient should be put first, then the next most lenient, and so forth, the most severe being put last. Any member who is in favour of the most lenient punishment, if overruled, will, of course, give his opinion in favour of the next most lenient, and will not oppose this because he is desirous of having the punishment still more lenient.

For example, if the court consist of nine members, of whom four are in favour of penal servitude, three of imprisonment, and two of a forfeiture, the forfeiture will be put first to the court, and when negatived, the imprisonment will be put next. The members who were in favour of forfeiture will, of course, vote for imprisonment as against penal servitude, and thus five votes will be given in favour of imprisonment, being an absolute majority of the court.

When the nature of the punishment has been determined, the quantum of punishment must be ascertained; that is to say, in the case of imprisonment, the number of months or days of imprisonment.

As before, the most lenient proposal will be put first, and a member who is in favour of the shortest term of imprisonment will, of course, support the next shortest term, rather than support a longer term, and will not give his opinion against the next shortest term merely because he desires to have a term shorter still.

For example, if in a court of nine members two members desire to award three months' imprisonment, two others four, another six, and the other four ten months, the three months will be put first, and, when negatived, the four months will be put next, which will be supported by the members who wished for three months, but will be opposed by the members who desire a longer term. The six months will next be put, and will be supported by those who desire to award three months and four months, so that the ultimate sentence will be six months' imprisonment.

It is not a proper course of proceeding to take the terms of imprisonment or other punishment proposed by each member, and strike an average; but naturally in the course of discussion among the members of the court, some punishment intermediate between the most severe and most lenient punishment proposed

by the different members will usually be arrived at, without necessarily resorting to actual voting, as in the above examples.

(B) The provisions of the Army Act referred to are those contained in s. 48 (8), where the concurrence of two-thirds is required for a sentence of death; in s. 53 (8), where an equality of votes on the finding is declared to be an acquittal; and in s. 51 (3) and (5), under which an objection to the president allowed by one-third of the members, and an objection to an officer allowed by one-half of the members is to be allowed.

(C) *Junior in rank, i.e., rank in which they take their seats* (Rule 58).

The opinion of each member is taken separately on each charge (Rule 43 (B)). If there is a judge-advocate, the opinions are taken by him; if there is not, then by the president.

70. If any question should arise incidentally during the trial, the person, whether prosecutor or prisoner, requesting the opinion of the court is to speak first; the other person is then to answer, and the first person is to be allowed to reply.

Procedure on incidental question.

This rule will apply to such questions as the admissibility of evidence, the propriety of any question, or the recalling of a witness.

71. (A) A court may be sworn at the time to try any number of prisoners then present before it, whether the prisoners are to be tried together or separately, and each prisoner shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

Swearing of court to try several prisoners.

(B) In the case of several prisoners to be tried separately, the court, upon one of those prisoners objecting to a member, may, according as they think fit, proceed to determine that objection or postpone the case of that prisoner, and swear the members of the court for the trial of the others alone.

(C) In the case of several prisoners to be tried separately, the court, when sworn, shall proceed with one case, postponing the other cases, and taking them afterwards in succession.

(A) Under this rule it will not be necessary, where there are several prisoners to be tried separately, to go through the process of swearing the court for each, but all the prisoners may be brought up together, and the proceedings for objections to and swearing the members (see Rules 25 to 30) may be gone through for all the prisoners at the same time. After the members are sworn, those prisoners who are not then to be tried will be removed.

This course of procedure will not affect the position of the court, which will, as heretofore, be a separate court for the trial of each case, and, as heretofore, the swearing of the court will be mentioned in the proceedings of each separate case.

(B) It need hardly be observed that when, in consequence of

an objection by one prisoner a new officer serves, the other prisoners who before made no objection to the court will have the right to object to the new officer.

(C) It is obvious that in the case of several prisoners being tried together, each prisoner will be called on separately to plead and make his defence, and a finding must be arrived at separately for each prisoner, and each prisoner found guilty must be separately sentenced, and a separate record accordingly will be made in the proceedings. It may be proper to make a distinction between the sentences of prisoners found guilty of the same offence, having regard to rank, character, degree of criminality, or other considerations.

Swearing of
interpreter
and short-
hand-
writer.

72. (A) At any time of the trial an impartial person may, if the court think it necessary, and shall, if either the prosecutor or the prisoner requests it on any reasonable ground, be sworn to act as interpreter.

(B) An impartial person may at any time of the trial, if the court think it desirable, be sworn to act as a shorthand writer.

(C) Before a person is sworn as interpreter or shorthand writer, the prisoner should be informed of the person who is proposed to be sworn, and may object to such person as not being impartial; and the court, if they think that such objection is reasonable, shall not swear that person as interpreter or shorthand writer.

(A and B) It will often be convenient to swear a shorthand writer and interpreter at the same time as the members and officers of the court are sworn, but this is not obligatory, For form of oath and solemn declaration see Rules 27 and 28. For remarks on employment of interpreter, ch.V, para. 70.

(C) Any objection made by the prisoner to the interpreter or shorthand writer will be dealt with in the same way as an objection to a member of the court.

The court should, if the prisoner requests it, allow him to call witnesses in support of the objection, but any objection which appears to the court to have any foundation should, as a rule, be allowed.

General Provisions as to Witnesses and Evidence.

Evidence to
be relevant
and accord-
ing to rules
in English
courts.

73. (A) A court-martial shall not receive evidence for the prosecution which is not relevant to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible either according to the rules of civil courts in England, or under the Army Act, or under any other Act of the Parliament of the United Kingdom.

(B) The rules of evidence adopted in civil courts in England will be followed by courts-martial, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person will not be required to answer any question or produce any docu-

ment which he could not be required to answer or produce in a like proceeding before a civil court in England.

(c) By "civil court" in this rule is meant a court of ordinary criminal jurisdiction in England, including a court of summary jurisdiction.

(A) With respect to the relevancy of evidence, see the note on Rule 60 (B), and as to relevancy and inadmissibility of evidence generally, see chapter VI, paras. 15-81.

The provisions of the Army Act referred to in this paragraph are ss. 163, 164, and 165.

(B) and (C). The Army Act, by s. 128, directs courts-martial to follow the rules of evidence which are followed in courts of ordinary criminal jurisdiction in England. Moreover, s. 127 of the Act expressly lays down that courts-martial are not to be subject in any respect to any Indian, colonial, or foreign statute law or ordinance.

74. The court may take judicial notice of all matters of notoriety, including all matters within their general military knowledge. Judicial notice.

Judicial notice means that the court will recognise a matter without formal evidence (see ch. VI, paras. 10, 11).

75. The prosecutor is not bound to call all the witnesses whose evidence is in the summary of evidence, or in the abstract of evidence given to the prisoner, but he should ordinarily call such of them as the prisoner desires to be called, in order that the prisoner may, if he thinks fit, cross-examine them, and the prosecutor should for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses. Calling of all prosecutor's witnesses.

As the cross-examination of a witness for the prosecution may be most material for the purposes of the defence, a prosecutor should always have all his witnesses present. Failure to produce a material witness for cross-examination might invalidate the proceedings. Any witness whose evidence is in the summary or abstract of evidence, and whom the prisoner asks to have called, should be called by the prosecution.

The object of this rule is to enable the prosecution to proceed, although some witness is not available, and the rule is not intended to absolve the prosecutor from the responsibility of proving his case, or of calling all the available witnesses who can give material evidence (see note to Rule 60), and, as a rule, the whole case as it appears in the summary of evidence should be proved by the prosecutor. If the case fails from the prosecutor not calling any available witness, or not asking any necessary questions of a witness, he becomes personally responsible to the convening officer.

76. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract given to the prisoner, notice of the intention shall be given to the prisoner a reasonable time before the witness is called. Calling of witness whose evidence is not contained in summary or abstract.

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summary or abstract. is called ; and if such witness is called without such notice having been given the court shall, if the prisoner so desire it, either adjourn after taking the evidence of the witness, or allow the cross-examination of such witness to be postponed, and the court shall inform the prisoner of his right to demand such adjournment or postponement.

Where no summary or abstract has been delivered (as *e.g.*, on suspension under Rule 103 of Rule 14) this rule will apply to every witness.

The court are, under Rule 85 (D) justified in calling of their own motion a witness not produced by the parties, if they consider it necessary for the ends of justice, but this power should be sparingly exercised ; and they should not adjourn in order to obtain for themselves further testimony.

List of prisoner's witnesses.

77. The prisoner shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the prisoner alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the prisoner has not requested steps to be taken as provided by Rule 14(A).

The prosecutor may be called as a witness for the defence. The judge-advocate, though not competent as a witness for the prosecution, may be called for the defence. A member of a court-martial is a competent witness for the defence, but not for the prosecution (Army Act, s. 50 (3)); and may be sworn at any stage of the proceedings; but it is desirable to avoid placing officers on courts-martial whose evidence is likely to be required. It need scarcely be observed that a member, if called on to give evidence, must be sworn like other witnesses in open court, and be subject to cross-examination, and that he does not cease in any respect to be a member of the court.

Procuring attendance of witnesses.

78. (A) The convening officer, or after the assembly of the court the president, shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or prisoner desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of such attendance.

(B) Any such witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge-advocate, or the commanding officer of the prisoner.

(C) Any such witness who is subject to military law shall be ordered to attend by the proper military authority.

(A) *Whose attendance can reasonably be procured.*—These

words will prevent a prisoner having any technical ground of complaint in case a distant witness whom he requires is not procured; but it is the duty of the officer (whether the convening officer or the president) to secure the attendance of every witness whom there is any ground to suppose to be material for the defence, and the court should adjourn, if necessary, for the purpose. (See Rule 79.)

May be required to undertake to defray the cost.—This power is given in order to prevent prisoners or prosecutors demanding unreasonably the attendance of witnesses. In the case of the prosecutor, the cost would usually be defrayed as part of the expenses of the prosecution. In the case of the prisoner, this provision should not be allowed to interfere with the calling of a witness who appears to be material. The absence of a material witness may be held afterwards to invalidate the proceedings of the court-martial, even though, if the witness had been called, the court would probably have arrived at the same decision, inasmuch as it is impossible to tell what effect the evidence of such a witness might have had on the court.

See generally as to expenses of witnesses, the Army Allowance Regulations.

If a witness has in his possession or under his control any books, accounts, letters, returns, papers, or other documents which are thought necessary for the trial, care must be taken, in summoning him, to require him to bring them with him; as he would be justified in declining to acknowledge a mere verbal request.

(B) A witness summoned or ordered to attend before a court-martial has the same privilege from arrest as a witness before one of the superior civil courts. (Army Act, s. 125 (2)). See note as to what this privilege is. If a witness not subject to military law makes default in obeying a summons after payment or tender, of his expenses, he can be punished by a civil court. (Army Act, ss. 126, 180 (1)).

Order.—For Form see Appendix II, Form of Proceedings.

(C) Disobedience to any such order is punishable under s. 28 (1) of the Army Act.

There is no rule of law which exempts the governor or the general commanding in a colony from giving evidence; but regard must be had to the dignity of his office, and it is clear that he would be justified in declining to answer questions respecting confidential official correspondence, and like matters, on grounds of public policy. (See ch. VI, paras. 95–98.)

79. If such proper steps as mentioned in the preceding rule have not been taken as to any witness, or if any witness whose attendance could not be reasonably procured before the assembly of the court is essential to the prosecution or defence, the court shall adjourn and report the circumstances to the convening officer.

Adjournment of court for non-attendance of witnesses.

80. During the trial a witness other than the prosecutor ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question, or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

Withdrawal of witnesses from court.

As the trial begins with the arraignment of the prisoner, any witnesses in court should be ordered to withdraw before he is arraigned. If any such discussion as is mentioned in the rule arises, the court should generally order the witness to withdraw, as the discussion might influence his answer.

Swearing of
witnesses.

81. (A) Every witness, before he gives his evidence, shall be sworn by the judge-advocate, or by the president, or by a member of the court.

(B) The form of oath for a witness shall be as follows :—

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth.

So help you God.

(c) Rule 30 shall apply to every witness.

(d) Where a witness is permitted to make a solemn declaration instead of being sworn the declaration may be taken before a person authorised to administer the oath, and the form of declaration shall be as follows :—

I, _____, do solemnly promise and declare that the evidence which I shall give before this court shall be the truth, the whole truth, and nothing but the truth.

(A) See Army Act, s. 52 (3). As to mode of administration of the oath, see Rule 30 and note.

(D) A solemn declaration is allowed to be made in the circumstances mentioned in s. 52 (4) of the Army Act, that is to say, where the witness objects to take an oath, and the court are satisfied of the sincerity of the objection, or he is objected to as incompetent to take an oath and the court are satisfied of the oath having no binding effect on his conscience.

If a witness refuses to be sworn or make a declaration, or to produce any document in his possession or control legally required by the court to be produced, or to answer any question to which the court may legally require an answer; the court may, if he is subject to military law, order him to be taken into military custody, with a view to his punishment, Army Act, s. 28, and if he is not so subject, may certify the offence to a civil court, with a view to his punishment by such court, Army Act, s. 126. The civil court will be the same as that mentioned in the note to s. 126 (3).

Mode of
questioning
witnesses.

82. (A) Every question may be put to a witness orally by the prosecutor, prisoner, or judge-advocate, without the intervention of the court, and the witness will forthwith reply, unless an objection is made by the court, judge-advocate, prosecutor, or prisoner, in which case he will not reply until the objection is disposed of. The witness will address his reply to the court.

(B) The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the court, and such evidence may be explained

or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and prisoner may respectively examine him respecting the same.

(A) As under this rule every question may be put to a witness without being previously written down and submitted for the approval of the president or the court, the court and the judge-advocate, as well as the prosecutor, will have to attend to questions put, so as to object, if necessary, to the question before the witness replies to it.

Address his reply to the court.—That is, he must not address the prosecutor or prisoner in the second person, as such mode of address may lead to an altercation.

(B) *Read to him.*—When the evidence of a witness has been read to him, he should be asked whether it is correct. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure.

83. (A) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised by the cross-examination. Examination and cross-examination.

(B) The court may, if they think fit, allow the cross-examination of a witness to be postponed.

See Appendix II, Form of Proceedings, para. (5), p. 731.

For the law relating to the examination, cross-examination, and re-examination of witnesses, see ch. VI, paras. 104-119.

(B) The court should, if the prisoner requests it, allow the cross-examination of a witness to be postponed, unless the request appears to be made for the purpose only of obstruction.

84. (A) At any time before the time for the second address of the prisoner, the judge-advocate, also any member of the court, may, with the permission of the court, address through the president any question to a witness. Questions to witness by members of court or judge-advocate.

(B) Upon any such question being answered, the president shall also put to the witness any question relative to that answer which he may be requested to put by the prosecutor or the prisoner, and which the court deem reasonable.

Second address. See Rule 41 (C).

Any question put by a member of the court or judge-advocate will ordinarily be more conveniently put after the examination of the witness by the prosecutor and the prisoner is concluded, but before any other witness is called.

The court should always, under the power given by this rule, ask a witness any question which they are requested by the prosecutor or the prisoner to ask, and does not seem unreasonable.

85. (A) At the request of the prosecutor or prisoner Re-calling of wit-

nesses,
and calling
of witnesses
in reply.

a witness may, by leave of the court, be re-called at any time before the time for the second address of the prisoner for the purpose of having any question put to him through the president.

(B) A witness may, in special cases, be allowed by the court to be called or re-called by the prosecutor before the time for the second address of the prisoner, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the prisoner on any new matter which the prosecutor could not reasonably have foreseen.

(C) Where the prisoner has called witnesses as to character, the prosecutor before the time for the second address of the prisoner may call or re-call witnesses for the purpose of proving a previous conviction or entries in the defaulters' book against the prisoner.

(D) The court may call or re-call any witness at any time before the finding, if they consider that it is necessary for the ends of justice.

Second address. See Rule 41 (C).

(A) The president should also put to the witness any question relevant to the answer given which, if the witness was re-called at the request of the prosecutor, the prisoner, or if he was re-called at the request of the prisoner, the prosecutor, requests him to put.

(D) The power of calling a new witness should only be exercised by the court in cases of unforeseen witnesses becoming available, or of some exceptional circumstances, and should not be exercised to supplement any negligent conduct on the part of the prosecution. If a new witness is so called, the court should ordinarily allow him to be cross-examined by the other parties. If a witness is re-called, the questions asked should be limited to one or two questions relating to the evidence previously given by that witness.

It is very desirable that no witness should be called or re-called after the second address of the prisoner, as otherwise some irregularity is introduced into the proceedings; because, if new matter is introduced by such witness, it is necessary for the court, if so requested, to allow the prosecutor and the prisoner respectively to call witnesses in reply, and the prisoner to address the court with respect to such evidence, and the judge-advocate to supplement his summing up by a reference to such evidence. This remark, however, will not apply where the questions put to a witness re-called are limited as before suggested.

Friend of Prisoner and Counsel.

Prisoner
may have a
person to
assist him
on trial.

86. (A) A prisoner may have a person to assist him during the trial, whether a legal adviser or any other person.

(B) A person so assisting him may advise him on all points, and suggest the questions to be put to witnesses; and, if an officer subject to military law, shall have the same rights and duties as counsel have under these rules,

and the right of the prisoner shall be limited in like manner.

A person who is not subject to military law cannot, unless a counsel (as defined in Rule 92 (B)), under any circumstances, either examine witnesses orally or address the court, though he may be present in court and aid the prisoner.

The court should not allow the prisoner to address them in addition to his counsel, or officer acting as counsel, except as prescribed by Rule 93 (A).

The prisoner will, of course, be allowed every facility for communicating with his friend, whether a military man or counsel or not.

87. (A) Subject to these rules, counsel shall be allowed to appear on behalf of the prosecutor and prisoner at general and district courts-martial ;

Counsel allowed in certain courts-martial.

(1) When held in the United Kingdom ; and

(2) When held elsewhere, if the commander-in-chief, or the convening officer, declares that it is expedient to allow the appearance of counsel thereat, and such declaration may be made as regards all general and district courts-martial held in any particular place, or as regards any particular general or district court-martial, and may be made subject to such reservation as to cases on active service, or otherwise, as seems expedient.

(B) Save as provided in Rule 86, the rules with respect to counsel will apply only to the courts-martial at which counsel are under this rule allowed to appear.

No one can appear as counsel unless he is a barrister or solicitor or otherwise qualified as provided by Rule 92. There is no restriction on the number of counsel.

A person acting as a counsel, though not bound to such strict impartiality as the prosecutor, must still recollect that he is assisting in the administration of justice, and must not be guilty of any unfairness or want of candour. In his address, however, he will have the same liberty as the prisoner, see Rule 60 (C); but he must be even more guarded in referring to the conduct of persons not before the court.

88. (A) Where a prisoner gives notice of his intention to have a counsel to assist him during the trial, either on the day on which he is informed of the charge or at any time not being less than seven days before the trial, or such shorter time before the trial as in the opinion of the court would have enabled the prosecutor to obtain, if he had thought fit, a counsel to assist him during the trial, and would have enabled the authority appointing a judge-advocate to appoint a counsel to act as judge-advocate at the trial, or where such notice as mentioned in (B) is given to the prisoner on the part of the prosecution, a counsel may appear at the court-martial to assist the prisoner,

Requirements for appearance of counsel.

(B) If the convening officer so directs, a counsel may appear on behalf of the prosecutor, but in that case, unless the notice in (A) has been given by the prisoner, notice of the direction for counsel to appear shall be given to the prisoner at such time (not in any case less than seven days) before the trial, as would, in the opinion of the court, have enabled the prisoner to obtain a counsel to assist him at the trial.

(C) A counsel who appears before a court-martial on behalf of the prosecutor or prisoner, shall have the same right as the prosecutor or prisoner for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court, to put in any plea, and to inspect the proceedings, and shall have the right otherwise to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these rules as if he were that person; and in such case that person shall not have the right himself to do any of the above matters except as regards the statement allowed by Rule 93, or except so far as the court permit him so to do.

(D) When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined and re-examined as any other witness, and Rule 39 (c) and (d) shall not apply.

Counsel for
prosecu-
tion.

89. (A) The counsel for the prosecution should always make an opening address, and should state therein the substance of the charge against the prisoner, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(B) The counsel appearing on behalf of the prosecutor shall have the same duty as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by Rule 60 (B).

Counsel for
prisoner.

90. (A) The counsel appearing on behalf of the prisoner has the like rights and is under the like obligations as are specified in Rule 60 (c) in the case of the prisoner.

(B) If the court ask the counsel for the prisoner a question as to any witness or matter he may decline to answer, but he must not give to the court any answer or information which is misleading.

General
rules as to
counsel.

91. (A) Counsel, whether for the prosecution or for the prisoner, will conform strictly to these rules and to the rules of civil courts in England relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

(B) If a counsel puts to a witness a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the

witness objects to answering the question, the court shall consider whether the witness should be compelled to answer it; and

- (1) If they are of opinion that the imputation conveyed by the question would, if true, seriously affect their opinion as to the credibility of the witness, the court should require the witness to answer the question; but
- (2) If they are of opinion that the said imputation, if true, would not affect, or would not seriously affect the opinion of the court as to the credibility of the witness, the court should disallow the question.

If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the said matter.

(c) Counsel will not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

(d) Counsel will not state what is his own opinion as to any matter of fact before the court.

(e) Counsel will not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the fact.

(f) Counsel will treat the court and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the prisoner who may attend as a witness.

92. (A) Neither the prosecutor nor the prisoner has any right to object to any counsel, if properly qualified.

Qualifica-
tion of
counsel.

(B) A counsel shall be deemed properly qualified—

- (1) If in England or Ireland he is a barrister-at-law or solicitor.
- (2) If in Scotland he is an advocate or law agent.
- (3) If in India he is a barrister-at-law or advocate.
- (4) If in any other part of Her Majesty's dominions, he is recognised by the convening officer as having in that part rights and duties similar to those of a barrister-at-law in England and as being subject to punishment or disability for a breach of professional rules.

It will be observed that a solicitor or law agent may act as counsel.

93. (A) A prisoner, assisted by counsel, or by an officer subject to military law, may, if he thinks fit, at the close of the case for the prosecution, and before the address by such counsel or officer, make any statement giving his own

Statement
by prisoner
defended by
counsel or
officer.

account of the subject of the charges against him. Such statement may be made either in writing or orally, as if he were a witness, except that he must not be sworn and that no question can be put to him by the court or by any person.

(B) If the prisoner makes such a statement, the procedure will, so far as possible, be the same if the prisoner had called witnesses other than witnesses as to character.

(B) Therefore the prosecutor will be entitled to call witnesses in reply, and to reply to the speech of counsel or the officer acting as counsel for the prisoner.

Proceedings.

Record in
proceed-
ings of
transactions
of court-
martial.

94. (A) At a court-martial the judge-advocate, or, if there is none, the president, shall record or cause to be recorded all transactions of that court, and shall be responsible for the accuracy of such record (in these rules referred to as the proceedings); and if the judge-advocate is called as a witness by the prisoner, the president will be responsible for the accuracy of the record in the proceedings of the evidence of the judge-advocate.

(B) The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the prisoner, the judge-advocate, or the court considers it material, the question and answer shall be taken down *verbatim*.

(C) Any question which has been objected to, and the tender of any evidence which has been objected to, shall, if the prosecutor or prisoner so requests, or the court think fit, be entered with the grounds of the objection, and the decision of the court thereon.

(D) Where any address by or on behalf of the prosecutor or prisoner, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the same in the proceedings further or otherwise than the court think proper, or in the case of the summing up than the judge-advocate requires, except that—

- (1) The court shall in every case make such record of the defence made by the prisoner as will enable the confirming officer to judge of the reply made by or on behalf of the prisoner to each charge against him; and
- (2) The court should also record any particular matters in the address by or on behalf of the prosecutor or prisoner, which the prosecutor or prisoner, as the case may be, requires.

(E) The court shall not enter in the proceedings any

comment, or anything not before the court, or any report of any fact not forming part of the trial; but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.

(A) The record must be taken in a clear and legible hand, without erasures. Interlineations or corrections must be avoided as much as possible; when made they should be verified by the president's initials. The pages should be numbered and the sheets fastened together, and sufficient space must be left below the signature of the president for the remarks of the confirming authority. The station must be added, together with the date.

(B) *In a narrative form.*—That is to say, the material effect of a question and answer is to be written down as the evidence given by the witness, without distinguishing the question and answer. Thus, suppose the question to be "What did the prisoner do then?" and the answer to be "He left the room," the evidence taken down would be "Prisoner then left the room." Often, especially in cross-examination, the question is irrelevant, or is made irrelevant by the answer; in such cases it will be unnecessary to take anything down.

If the evidence is not given in English, the interpretation into English as given to the court will be taken down, except that where a question or answer is required to be taken down in the proceedings *verbatim*, and is not in English, it must be taken down, as nearly as may be, in the English character, and the interpretation of it into English added.

(E) The court can state in a separate document any remark they think proper to make on the conduct of any person who appeared before them, or on the manner in which a particular witness has given his evidence, or on the manner in which the prosecution has been conducted; also if they think the evidence shows that the prisoner has committed some offence not charged, *e.g.*, if he is charged with desertion in August, and the evidence shows that he deserted in June, they must acquit him, but may report separately the offence of June.

The court can scarcely be too guarded in expressing censure on individuals not before them for trial; indeed, cases justifying such expression will be rare and exceptional.

It will usually be desirable to make a note at the time of any matter upon which the court intend to make any such comment or report, although it will not be correct to enter such matter in the proceedings.

95. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and prisoner respectively, at all reasonable times before the court is closed to consider the finding.

Custody and inspection of proceedings.

96. (A) Where the court is a general court-martial the proceedings shall be at once sent by the person having the custody thereof, to such person as may be from time to time directed by Her Majesty, and, subject to the pro-

Transmission of proceedings after finding.

visions of any such direction of Her Majesty, as may be directed by the order convening the court.

(B) Where the court is a district court-martial, the proceedings shall be at once sent by the person having the custody thereof, to such person as may be directed by the order convening the court, or in default of such direction to the confirming officer.

(c) Where the court is a regimental court-martial, the proceedings shall be at once sent by the president to the confirming officer.

(A) *Persons having the custody*, that is (see Rule 95), if it is a general court-martial, or a district court-martial with a judge-advocate, the judge-advocate, and in any other case, the president of the court.

The proceedings of general courts-martial will be sent, if held in the United Kingdom, to the Judge-Advocate-General in London; if held elsewhere than in the United Kingdom to the General or other officer having power to confirm the findings and sentences of general courts-martial. Q.R., Sect. VI, para. 115.

Where the court-martial is on a marine, the proceedings will be sent to the Admiralty and preserved there.

The same course should, so far as possible, be followed with field general courts-martial.

If from any cause a member of the court-martial has become confirming officer, he cannot (with an exception in the case of a field general court-martial) confirm the finding and sentence of the court, but must transmit the proceedings for confirmation to a superior officer who is competent to confirm the findings and sentences of the like description of court-martial (Army Act, s. 54 (4)). This officer would ordinarily be—in the United Kingdom, if it is a district court-martial, the Commander-in-Chief; if it is a regimental court-martial, the general commanding the military district; in India, if it is a general court-martial the Commander-in-Chief; if it is a district court-martial, the next superior officer having authority to confirm the findings and sentences of general courts-martial, or, if there is none superior, the Commander-in-Chief; and if it is a regimental court-martial, the next superior officer having authority to convene a general or a district court-martial; elsewhere than in India, or the United Kingdom, the next superior officer who is competent to confirm; or if in a colony where there is no such officer, then the governor of the colony.

Any confirming officer has power to withhold his confirmation either wholly or partly, and refer the finding and sentence, so far as he withholds his confirmation, to a superior authority competent to confirm the finding and sentences of the like description of courts-martial (Army Act, section 54 (5)). The reference should be made to one of the officers mentioned above in this note.

The original proceedings, and not a copy, must be signed, and sent to the confirming officer. If the proceedings are recorded and signed in duplicate, one must be treated as a certified copy of the other, and not as the original.

The proceedings should be dated and signed immediately after the finding, in the case of acquittal on the charges (see Rule 45); and after the sentence, in case of a conviction.

97. (A) The proceedings of a court-martial (other than a regimental court-martial) shall, after promulgation, be forwarded, as circumstances require, to the office of the Judge-Advocate-General in London or India, or to the Admiralty, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

Preservation of proceedings.

(B) The proceedings of a regimental court-martial, when promulgated, shall be preserved for not less than three years, with the regimental records of the corps to which the prisoner belonged, in manner from time to time directed by Her Majesty's Regulations.

See note to the next Rule, and Q.R., Sect. VI, para. 118.

98. The rate at which copies of the proceedings of a court-martial are to be supplied shall be the actual cost of the copy required, not exceeding twopence for every folio of seventy-two words; and the officer or person having the custody of those proceedings must, on demand made within the time limited for the preservation of such proceedings, supply a copy accordingly to any person tried by such court-martial.

Rate of payment for copies of proceedings.

Under s. 124 of the Army Act, a person tried by court-martial has a right, in the case of a general court-martial within seven years, and in the case of any other court-martial within three years after the confirmation of the finding and sentence of the court, to have a copy of the proceedings, including those with respect to revision and confirmation, from the person who has the custody of them, on payment not exceeding 2d. for every seventy-two words. This rule further limits the payment to the actual cost. If the cost exceeds 2d., the prisoner can only be charged 2d., and the rest of the cost must be defrayed by the public.

The above section of the Army Act might possibly be held not to apply to the case of a court-martial where the finding is of acquittal, and thus requires no confirmation, or where the finding and sentence are not confirmed; but the proceedings of every such court-martial will be kept, and the officer having the custody of them will give copies in accordance with the section and the rules.

Time limited.—See Rule 97.

99. (A) If the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president of or the judge-advocate at the court-martial, may be accepted in lieu of the original.

Loss of proceedings.

(B) If there is no such copy, and sufficient evidence of the charge, finding, sentence, and transactions of the court can be procured, that evidence may, with the assent of the prisoner, be accepted in lieu of the original proceedings, or part thereof lost.

(C) In any case above in this rule mentioned, the finding

and sentence, if requiring confirmation, may be confirmed, and shall be as valid as if the original proceedings, or part thereof, had not been lost.

(D) If, in a case where confirmation of a finding or finding and sentence is required, the proceedings, or part thereof, were lost before confirmation, and there is no such copy or evidence, or the prisoner refuses such assent, as above mentioned, the prisoner may be tried again, and on the issue of an order convening the court for such trial, the said finding and sentence of the previous court, of which the proceedings were so lost, shall be null.

(A) *Original proceedings.*—See note to Rule 96; and as to the impropriety of annexing documents to the proceedings, Q. R., Sect. VI, paras. 112, 113.

Sufficient evidence.—This may be obtained by the president, or some member of the court, writing out from memory the substance of the charge, finding, and sentence, and a summary of the transactions of the court, which should be authenticated by the signature of the members. A copy of the charge, however, should always be procured, if practicable, from the officer who framed it, or any other available source.

Judge-Advocate.

Appoint-
ment of
judge-
advocate
and dis-
qualifica-
tion.

100. (A) Where the convening officer is authorised to appoint a judge-advocate, he shall, in the case of a general, and may, in the case of a district court-martial, by order appoint a fit person to act as judge-advocate at such court-martial.

(B) An officer who is disqualified for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial.

(C) A court-martial shall not be invalid by reason of any invalidity in the appointment of the judge-advocate officiating thereat, in whatever manner appointed, if a fit person has been appointed; but this rule shall not relieve from responsibility the person who made such invalid appointment.

(B) *Disqualified.*—See Rule 22 (B) and note thereon. A civilian who is under the same disqualification as is mentioned in that rule ought not to serve as judge-advocate, though not in terms disqualified by this rule; indeed, by the Army Act, s. 50 (3), a prosecutor or witness for the prosecution, whether an officer or not, is disqualified for acting as judge-advocate.

(C) The object of this paragraph is merely to prevent a miscarriage of justice in consequence of any invalidity in the appointment of a judge-advocate; not to enable an officer, who is not authorised to appoint a judge-advocate, to appoint one.

An officer who, without due authority, attempts to appoint a judge-advocate, will justly incur censure.

A fit person.—A judge-advocate should of course be free from

all suspicion of bias or prejudice; and should possess some acquaintance with military law and the rules of evidence.

101. If the judge-advocate dies, or from illness, or from any cause whatever is unable to attend, the court shall adjourn, and the president shall report the circumstance to the convening authority; and a person not disqualified to be judge-advocate may be appointed by the proper authority, who shall be sworn, and act as judge-advocate for the residue of the trial, or until the judge-advocate returns.

Substitute on death, illness, or absence of judge-advocate.

Sworn.—See Rules 27, 28. See Appendix II, Form of Proceedings, para. (5), p. 731.

102. The powers and duties of a judge-advocate are as follows :—

Powers and duties of judge-advocate.

- (A) The prosecutor and the prisoner respectively, are at all times, after the judge-advocate is named to act on the court, entitled to his opinion on any question of law relative to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court;
- (B) At a court-martial he represents the Judge-Advocate-General;
- (C) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he will inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and will give his advice on any matter before the court.
- (D) Any information or advice given to the court on any matter before the court will, if he or the court desires it, be entered in the proceedings.
- (E) At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence and give his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.
- (F) Upon any point of law or procedure which arises upon the trial which he attends, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge-advocate on any legal point. The court, in following the opinion of the judge-advocate on a legal point, may record that they have decided in consequence of that opinion.

- (g) The judge-advocate has, equally with the president, the duty of taking care that the prisoner does not suffer any disadvantage in consequence of his position as prisoner, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.
- (h) In fulfilling his duties the judge-advocate will be careful to maintain an entirely impartial position.

(F) With reference to this paragraph, it is to be observed that the members of the court may become responsible to the ordinary civil courts of law in the event of the prisoner being unjustly convicted. See ch. VIII. This liability may turn on the question whether they exercised a *bonâ fide* judgment; and though they are not bound by the opinion of the judge-advocate, yet disregard of his advice, if that advice is right, might be held to show that they did not exercise a *bonâ fide* judgment. On the other hand, the adoption of the advice of the judge-advocate, even if wrong, may, in a doubtful case, practically exonerate the members from liability.

(G) *Permission of the court.*—This should never be refused unless the court consider that the judge-advocate is acting improperly, or in such a manner as to obstruct the proceedings, and they should always record their reasons for refusing the permission.

As to the duty of the president towards the prisoner see Rule 59 (B) and note.

Exception from Rules.

Suspension
of rules on
the ground
of military
exigencies
or the
necessities
of discipline.

103. Where it appears to the officer convening a court-martial, or to the senior officer on the spot, that military exigencies, or the necessities of discipline, render it impossible or inexpedient to observe any of the rules 5, 8, 13, and 14, he may, by order under his hand, make a declaration to that effect, specifying the nature of such exigencies or necessities, and thereupon the trial or other proceeding shall be as valid as if the rule mentioned in such declaration had not been contained herein; and such declaration may be made with respect to any or all of the rules above in this rule mentioned in the case of the same court-martial.

Provided that the prisoner shall have full opportunity of making his defence, and shall be afforded every facility for preparing it which is practicable, having due regard to the said exigencies or necessities.

The nature, and not merely the existence of military exigencies, or the necessities of discipline, must be stated in the order.

The power conferred by this rule should hardly ever be exercised, except when on active service, and then only if absolutely

necessary. It may, however, occasionally be necessary to resort to it on the eve of embarkation, or on the line of march, or possibly in an extreme case, where the necessities of discipline require a very speedy trial and punishment.

In exercising the power under the rule, the officer must consider whether it is necessary to dispense with all the rules mentioned. For example, the observance of Rule 5 may be practicable, although that of Rule 14 is not so. If Rules 5 and 8 are suspended by the order, some means must be taken to inform the prisoner of the charge, and of the names of the witnesses, and of the nature of their evidence, and the court must take care that the prisoner is not prejudiced by reason of the suspension, as, for instance, by not having received any summary of evidence.

The power of dispensing with Rule 13 is only intended to be exercised, in case it is necessary to try a prisoner before he can communicate with any witness or friend at a distance. That rule should never be dispensed with except in extreme cases, and even then the prisoner must be allowed free communication with any witness or friend on the spot.

Full opportunity of making his defence.—The prisoner will not have this opportunity unless he receives in reasonable time the information mentioned above; and if he requests a reasonable adjournment in order to consider the witnesses' evidence, or to acquaint himself with the charge, or requests the postponement of the cross-examination of a witness, the court should grant the request, and may adjourn for the purpose. A refusal might be held to be non-compliance with this proviso, and thus to invalidate the trial. For the same reason the court, even in the absence of any such request, must take care that the prisoner is not prejudiced by being taken by surprise, either by the charge or the evidence of the witnesses.

Rule 14 (C) and (D) must always be complied with, and Rule 14 (A) and (B), if not complied with within the time there mentioned, should be complied with as long as possible before the assembly of the court.

Field General Court-Martial.

104. The foregoing rules shall not, save as hereinafter mentioned, apply to field general courts-martial, which shall be subject to the following rules :—

Convening
of field
general
court-
martial.

(A) A field general court-martial may be convened—

(i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in such country : or

(ii) By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to

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him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a field general court-martial in Her Majesty's dominions unless he is authorised so to do by the general officer commanding the forces to which such officer belongs.

(C) An officer, before convening a field general court-martial for the trial of a person, shall be satisfied that it is not practicable to try such person by an ordinary court-martial, and—where such officer is below the rank of field officer and is not a commanding officer—be further satisfied that it is not practicable to delay the trial for reference to a superior officer.

See generally as to field general courts-martial s. 49 of the Army Act, and Chapter V, paras. 25 and 36.

Under s. 49 and para. (C) the court is not to be convened unless the convening officer is satisfied that it is not practicable to try the offender by an ordinary court-martial; and para. (C) also requires him, if he is below the rank of field officer, and is not a commanding officer, to be satisfied that it is not practicable to delay for reference to a superior officer. Further, under para. (B) an officer in command of a detachment or portion of troops not on active service is not to convene the court in Her Majesty's dominions, unless authorised to do so by the general officer commanding the forces to which he belongs.

The court should not as a rule be convened for the trial of an offence not committed on active service, in any place where ordinary civil justice is administered.

Subject to the restrictions imposed by s. 49 and by this rule, a field general court-martial can try any offence, and can try an officer.

Practicable. See Rule 121.

Composition of field general court-martial.

105. (A) Not less than three officers must be appointed.

(B) If the convening officer is of opinion that three other officers are not available to form the court, he may appoint himself president of the court; but if he is of opinion either that three other officers are available, or that although three other officers are not available he himself is by reason of his position as confirming officer or otherwise not available, he should appoint another officer to be president, who may be of any rank, but should not be below the rank of captain, unless in the opinion of the convening officer an officer of that or some higher rank is not available.

(C) The officers should have held commissions for not less than one year, and if in the opinion of the convening officer any officers are available who have held commissions for not less than three years, he should appoint those officers in preference to officers of less service.

(D) The provost-marshal, an assistant provost-marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the court, but save as aforesaid any available officers may be appointed to sit.

(A) This gives the ordinary rule for the constitution of a field general court-martial. In case of military exigencies, two officers only may be appointed, if three are not available. Rule 106 (B). Speaking generally, the rules which govern the procedure of ordinary courts-martial should be observed as far as practicable.

(B) *Available*. See Rule 121.

106. (A) Where the convening officer is satisfied that military exigencies or other circumstances prevent compliance with Rule 105, and that it is not practicable to delay the trial for the purpose of such compliance, then if, in his opinion, three officers are not available, two will be appointed. As to field general court-martial where military exigencies occur.

(B) The court may be convened, and the proceedings of the court recorded in accordance with the form in the Second Appendix to these rules; but if it appears to the convening officer that military exigencies or other circumstances prevent the use of such form, the court-martial may be convened and the proceedings carried on without any writing, except that such written record as seems practicable must be kept by the provost-marshal or assistant provost-marshal, if present, or if not, by the president and the officer charged with the promulgation, stating as near as may be the particulars set forth in the form, and stating at least the name (or, if the name is not known, the description) of the offender, the offence charged, the finding, sentence, and confirmation, and any recommendation to mercy.

(C) The convening officer will report to superior authority for the information of the officer who, if a field general court-martial had not been convened, would have had power to convene a general court-martial to try the prisoner, the military exigencies or other circumstances which prevented compliance with Rule 105, or the use of the form in the Second Appendix.

Before resorting to the exceptional course allowed by this rule, the convening officer must satisfy himself of the military exigencies or other circumstances which justify it.

The prisoner must always have full opportunity of making his defence. See Rule 115.

Available.—See Rule 121.

(B) For Form, see Appendix II, p. 747.

107. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. Charge.

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Trial of
several
prisoners.

108. The court may be sworn at the same time to try any number of prisoners then present before it, but, except so far as prisoners are tried together for an offence committed collectively, the trial of each prisoner will be separate.

Challenge.

109. (A) The names of the president and members of the court will be read over in the hearing of the prisoners, and they will be asked if any of them objects to be tried by any of those officers.

(B) If any prisoner objects to an officer, and any member of the court thinks the objection reasonable, steps will be taken to try the prisoner before a court composed of officers against whom he has no reasonable objection.

Swearing
court.

110. (A) The president will administer to the other members of the court, and a member of the court, when sworn, will administer to the president the following oath :—

You, _____, do swear that you will well and truly try the prisoner [*or* prisoners] before the court according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the court until it is duly confirmed, and you do further swear that you will not, on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless thereunto required in due course of law. So help you God.

(B) The following oath shall be administered by a member of the court to every interpreter :—

You do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this court-martial. So help you God.

Arraign-
ment.

111. When the court are sworn, the president will state to the prisoner then to be tried the offence with which he is charged, with, if necessary, an explanation giving him full information of the act or omission with which he is charged, and will ask the prisoner whether he is guilty or not of the offence.

Plea to
jurisdic-
tion.

112. If a special plea to the general jurisdiction is offered by the prisoner, and is considered by the court to be proved, the court shall report the same to the commanding officer.

See Rule 34, and note.

Witnesses.

113. (A) The witnesses for the prosecution will be called, and the prisoner will be allowed to cross-

examine them, and to call any available witnesses for his defence.

(B) The following oath shall be administered by a member of the court to every witness :—

The evidence which you shall give before this court shall be the truth, the whole truth, and nothing but the truth,
So help you God.

114. (A) A member of the court or a witness may take an oath with such ceremonies and in such manner as makes the same binding on his conscience, and the words "you" and "So help you God" may be varied or omitted for the purpose. Mode of swearing witness, and solemn declaration.

(B) If a member of the court or a witness or an interpreter objects to take an oath, or is objected to as incompetent to take an oath, and the court is satisfied of the sincerity of the objection, or, where the competence of the person to take the oath is objected to, of the oath having no binding effect upon the conscience of such person, the court shall permit such person in lieu of an oath, to make a solemn declaration, which will be in the same form as the oath, with the substitution of "I" for "you," and with the omission of "You do swear that" and "So help you God," and with the substitution or addition, where necessary, of "I do solemnly declare that." Solemn declaration by witness.

See Rule 30, and note.

115. The prisoner will be asked what he has to say in his defence, and shall be allowed to make his defence. Defence.

116. (A) In the case of an equality of opinions on the finding, the prisoner will be acquitted. Acquittal.

(B) The finding of acquittal requires no confirmation, and, if it relates to all the offences charged against a prisoner, will be declared at the time of the finding, and the prisoner will thereupon be discharged from custody.

117. (A) The court, if consisting of three or more officers, may award any sentence which a general court-martial can award; but if the court pass sentence of death, the whole court must concur. Sentence.

(B) The court, if consisting of two officers, may award any sentence authorised for the offence, not exceeding summary punishment, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the prisoner, together with the finding and sentence.

118. (A) Except as provided by Rules 109 (B), 116, and 117, every question will be determined by the majority of General provisions

as to votes
and powers
of court.

opinions, and in case of equality, the president shall have a second or casting vote.

(B) If, after the commencement of the trial, the court consider that any prisoner named in the schedule to the order convening the court should be tried by an ordinary court martial, the court may strike the name of that prisoner out of the schedule.

(C) The proceedings shall be held in open court, in the presence of the prisoner, except on any deliberation among the members, when the court may be closed.

(D) The court may adjourn from time to time, and may, if necessary, view any place.

Confirma-
tion.

119. (A) Except in the case of acquittal, the finding and sentence of the court shall be valid only in so far as the same are confirmed by proper military authority.

(B) The provost-marshal or an assistant provost-marshal cannot confirm the finding or sentence of the court.

(C) A prosecutor of a prisoner or a member of the court trying a prisoner cannot confirm the finding or sentence of the court as regards that prisoner, except that if a member of the court trying a prisoner would otherwise under these rules have power to confirm the sentence, and is of opinion that it is not practicable to delay the case for the purpose of referring it to any other officer, he may confirm the finding and sentence.

(D) Where a sentence of death or penal servitude has been passed, the sentence shall not be carried into effect until confirmed by a general or field officer who is commanding the force with which the prisoner is present at the date of his sentence, and is also authorised under (E) to confirm such sentence.

Provided that in case of a sentence of death it shall be the duty of any such officer, who is not in chief command of the forces in the field comprising the said force with which the prisoner is present, to reserve the sentence for confirmation by a superior officer; except where he is of opinion that, by reason of the nature of the country, the great distance, or the operations of the enemy, it is not practicable to delay the case for confirmation by the said officer in chief command, or by any officer superior to himself in command of the said force with which the prisoner is present, and in that case he may confirm the same.

(E) Subject to the exceptions in (B), (C), and (D), the finding and sentence of a field general court-martial as regards any prisoner may be confirmed—

(i) Where the court is convened by an officer in command of a detachment or portion of the troops not on active service, by an officer authorised to

confirm the findings and sentences of general courts-martial for the trial of offences in the force of which the said detachment or portion of troops form part ; and

- (ii) Where the court was convened by an officer in command of any troops on active service, by any general or field officer, or by the commanding officer of a corps, or portion of a corps, or by any officer not qualified as aforesaid, but being in immediate command of the body of the forces with which the prisoner is present ; subject nevertheless to the provisions of (F).

(F) It shall be the duty on active service—

- (i) Of any such officer in immediate command as aforesaid, if not otherwise qualified to confirm, to reserve for confirmation by superior authority a finding and sentence, except where he is of opinion that it is not practicable to delay the case for that purpose ; and
- (ii) Of an officer who has not power to confirm the finding and sentence of a general or district court-martial to reserve (save as provided by (G)) for confirmation by an officer having that power, a sentence awarding a punishment in excess of that which a regimental court-martial can award.

(G) Where the punishment awarded by a sentence is such that an officer is required to reserve the same for confirmation, that officer may nevertheless, if he thinks fit, confirm the sentence, if in confirming it he mitigates, remits, or commutes the punishment, so as to make it a punishment a sentence for which he has power to confirm.

(H) Any officer may, if he thinks it desirable, reserve any finding or sentence for confirmation by superior authority.

(I) A confirming authority shall not send back a finding and sentence for revision more than once, nor recommend the increase of a sentence, and on any revision the court shall not take further evidence nor increase the sentence.

Practicable.—See Rule 121.

(A) This is the same provision as is enacted in the Army Act, s. 54 (6) for ordinary courts-martial (see note to that section, and ch. V, para. 5).

(B-F) The general effect is this. The ordinary rule for the confirmation of the finding and sentence of a field general court-martial, where it is not a sentence of death or penal servitude, will be (as laid down in (E)) that it is confirmed where troops

are not on active service, by some officer authorised to confirm the findings and sentences of general courts-martial; and where troops are on active service, by some general or field officer, or by some commanding officer, as defined by Rule 121 (B). But as some other officer may be in command of an outpost where an immediate example is required, that officer is allowed in such a case to confirm if delay is not practicable (E (ii) F (i)).

An officer, however, cannot confirm a sentence exceeding six weeks' imprisonment, unless he has power to confirm sentences of general or district courts-martial (F (ii)); but if the sentence was (say) for three months' imprisonment, an officer can under (G) mitigate the sentence to some punishment not exceeding six weeks' imprisonment, and can then confirm it.

A sentence of death or penal servitude can only be confirmed by the general or field officer in command of the forces with which the prisoner is present, and authorised under (E) to confirm such sentence. And even that officer, if not in chief command of the forces in the field, must reserve a sentence of death for confirmation by the officer in chief command. If, however, communication with that officer is impracticable, or so difficult as to cause too great delay, a sentence of death may be confirmed by the officer of highest rank in the force with whom communication can be had (D).

(H) enables any officer to refer a confirmation to superior authority, or to confirm the finding and refer the sentence.

(I) applies the law enacted for ordinary courts-martial by Army Act, s. 54 (2).

(B) and (C) give effect to the ordinary rule that a prosecutor or a member of the court is not to confirm, and the rule is extended to the provost-marshal and his assistant as if he were the prosecutor.

Application of rules.

120. The foregoing rules—54 (Mitigation of sentence on partial confirmation), 56 (Confirmation notwithstanding informality in or excess of punishment), 96 (Transmission of proceedings after finding), 97 (Preservation of proceedings), 98 (Rate of payment for copies of proceedings), and 99 (Loss of proceedings)—shall, so far as practicable, apply as if a field general court-martial were a district court-martial.

Definitions.

121. (A) In the rules with respect to field general courts-martial, unless the context otherwise requires, the expressions "practicable" and "available" mean respectively practicable and available, having due regard to the public service.

(B) The expression "commanding officer of a corps or portion of a corps" means the officer whose duty it is under the provisions of Her Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against any of the persons belonging to such corps or portion of a corps who are present under his command, of having committed an offence, that is, to dispose of the charge on his own authority, or to refer it to superior authority.

122. Any statement in an order convening a field general court-martial as to the opinion of the convening officer, and any statement in the minute confirming the finding or sentence of a field general court-martial as to the opinion of the confirming officer, shall be conclusive evidence of such opinion, but this rule shall not prejudice the proof at any time of any such opinion when not so stated.

Evidence of
opinion of
convening
and con-
firming
officer.

PART II.—MISCELLANEOUS.

Regulations for Courts of Inquiry, other than Courts of Inquiry held under Section 72 of the Army Act.

Courts of
inquiry.

123. (A) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

(B) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

(C) The court will be guided by the written instructions of the officer who assembled the court. The instructions should be full and specific, and must state the general character of the information required from the court in their report.

(D) A court of inquiry has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a commanding officer to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry.

(E) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry.

(F) Whenever any inquiry affects the character of an officer or soldier, full opportunity must be afforded to such officer or soldier of being present throughout the inquiry, and of making any statement he may wish to make, and of cross-examining any witness whose evidence, in his opinion, affects his character, and producing any witnesses in defence of his character.

(G) A court of inquiry has no power to compel witnesses to attend, and the evidence cannot be taken on oath.

(H) A court of inquiry will give no opinion on the conduct of any officer or soldier; and the proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier. Nevertheless, in the event of an officer or soldier being tried by court-martial in respect of any matter or thing which has been reported on by a court of inquiry, such officer or soldier shall be entitled to a copy of the proceedings of the court of inquiry.

(I) The whole of the proceedings of a court of inquiry will be forwarded by the president to the commanding officer who assembled the court, and that commanding officer will, on his own responsibility, form such opinion as he thinks just.

(J) When, in consequence of the assembling of a court of inquiry, an opinion adverse to the character of any officer or soldier is formed by the officer who determines the case so inquired into, whether such officer be the officer who assembled the court or a superior officer to whom the case has been referred by such last-mentioned officer, such adverse opinion shall be communicated to the officer or soldier against whom it has been given.

(K) The court may be re-assembled as often as the convening officer may direct, for the purpose of examining additional witnesses or recording further information.

See generally as to courts of inquiry, Q.R., Sect. VI, paras. 125-132.

As to privilege of report of court, see chapter VIII, para. 77; and as to privilege of witnesses, *ib.*, para. 85.

Regulations for Courts of Inquiry under Section 72 of the Army Act, for the purpose of determining the illegal Absence of Soldiers.

124. (A) A court of inquiry under Section 72 of the Army Act, will, when assembled, require the attendance of such witnesses as they think sufficient to prove the absence and other facts specified as matters of inquiry in the said section. Courts of inquiry as to illegal absence under s. 72.

(B) They will take down the evidence given them in writing, and at the end of the proceedings will make a declaration of the conclusions at which they have arrived in respect of the facts they are assembled to inquire into.

(C) The commanding officer of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(D) The court of inquiry will examine all witnesses who may be desirous of coming forward on behalf of the absentee, and in making their declaration, will give due weight to the evidence of such witnesses.

(E) A court of inquiry will administer the same oath or solemn declaration to the witnesses as if the court were a court-martial, but the members of such court will not themselves be sworn.

See Q.R., Sect. VI, para. 128.

(E) *Same oath.*—See Rule 81.

Explanation of "Prescribed" and "Commanding Officer."

Prescribed
officer for
commit-
ting, re-
moving,
and com-
muting
authority.

125. (A) The committing authority under ss. 59, 60, 61, 64, and 65 of the Army Act, shall include the officer commanding the military district or station where the military convict or military prisoner may for the time being be, and when the convict or prisoner is in Ireland the general commanding the forces in Ireland; but any officer in this rule mentioned shall not, by virtue of this rule, be a discharging authority.

(B) The removing authority under section 64, and the competent military authority under section 67 of the said Act shall, as regards a military prisoner for the time being in Ireland, include the general commanding the forces in Ireland.

(C) The general commanding the forces in Ireland, as respects a military prisoner undergoing his sentence in Ireland, and the adjutant-general, as respects persons undergoing sentence in any place whatever, shall be authorities having power under section 57 of the Army Act, to mitigate, remit, or commute punishment awarded by sentence of a court-martial.

Prescribed
procedure
for court of
inquest
(India)
under
s. 133.

126. When a court of inquest is required to be convened by the commanding officer under section 133 of the Army Act, the court shall be convened and inquest held in manner following:—

- (a) The commanding officer of the station will order the court to assemble.
- (b) The court will consist of three officers and of a medical officer.
- (c) The court shall not take evidence on oath, and shall warn every person who is accused or suspected that he is not required to give evidence criminating himself, but that any statement or evidence he gives may be used against him in the event of any further proceedings being instituted.
- (d) The court after hearing the evidence will report to the officer commanding the station the evidence as to the cause of the death, together with the written opinion of the medical officer of the court on his examination of the body as to the cause of death.
- (e) The commanding officer will, as soon as practicable, forward the report of the court to the nearest civil magistrate having authority to hold an inquest on death, who may proceed thereon as if he had himself held the inquest.

Prescribed
officer for

127. The competent military authority in Part II of the Army Act, includes in addition to the Commander-

in-Chief and Adjutant-General, in section 101 of that Act mentioned, the following officers, namely :—

competent
military
authority
(s. 101).

- (i) In India,
The Commander-in-Chief of the forces in India,
and the Commander-in-Chief of the forces of any
presidency in India (a).
- (ii) In any place situate out of India, and out of the
United Kingdom, the general or other officer
commanding the forces in such place. In addition
to the above-mentioned officers it also
includes :—
- (iii) For the purpose of sections 80, 82, 84, and 85 of the
said Act, the commanding officer of the soldier,
and every officer superior in command to that
commanding officer, and not hereinbefore in-
cluded :
- (iv) For the purposes of any transfer by consent under
section 83 (2) the general commanding the forces
in Ireland and the general commanding a military
district in the United Kingdom.
- (v) For the purposes of section 99 any officer having
power to convene a district court-martial for the
trial of the soldier.
- (vi) It also includes such officer as may be directed
from time to time by Her Majesty's Regulations
to perform in any place or for any purpose speci-
fied in that behalf the duty of the competent
military authority.

128. The expression "commanding officer," as used in the sections of the Army Act, relating to "*Courts-Martial*," to the "*Execution of Sentence*," and to the "*Power of Commanding Officer*," and in the provisions consequential thereon, and in these rules, means, in relation to any person, the officer whose duty it is, under the provisions of Her Majesty's Regulations, or, in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is, to dispose of it on his own authority or refer it to a superior authority. It also means, for the purpose of the summary award of fines for drunkenness, the officer commanding a troop, battery, or company.

Definition
of "com-
manding
officer."

Every officer, however temporary or casual his command over a prisoner may be, will be within this definition if the custom of the service enables him to tell off the prisoner. In all of these rules "commanding officer" has the meaning given to it by this rule.

(a) The words in italics may be disregarded, as the presidency commands-in-chief are abolished by the Madras and Bombay Armies Act, 1893.

In the portions of the Army Act not above mentioned, "commanding officer" is not limited to the commanding officer as defined by this rule, though the commanding officer as so defined is often (see notes) the proper officer to act.

It is laid down in Q.R., Sect. VI, paras. 16, 17, that the commanding officer of a detachment has the same power of awarding summary punishment as the commanding officer of the corps, subject to any restrictions that may be imposed by superior authority.

Colonial Prisons.

Committal and removal of prisoners in one colony to authorised prisons in other colonies.

129. (A) A military prisoner who has been sentenced to imprisonment in any place out of the United Kingdom may, if he is in any place mentioned in the first column of the following table, be committed, or, if he has been committed to prison, be removed, if occasion arises, to a *military* prison wherever situate, or to an *authorised* prison situate in any place mentioned opposite thereto in the second column of the following table :—

TABLE.

A military prisoner, sentenced to imprisonment, and being in any place in any of the groups following :—

May be committed, or, if he has been committed to prison, may be removed, to an authorised prison in—

GROUP I.

(American and Mediterranean.)

Canada.
Prince Edward Island.
Newfoundland.
Bermuda.
British Columbia.
Gibraltar.
Malta.
Cyprus.

Any place in Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

GROUP II.

(West Indian.)

West Indies, including—
Jamaica.
Turks and Caicos Islands.
Honduras.
Bahamas.
Barbados and Windward Islands.
St. Vincent.
Granada.
Tobago.
St. Lucia.
Antigua and Leeward Islands.
Montserrat.
St. Christopher.
Nevis.
Virgin Islands.
Dominica.
British Guiana.
Trinidad.

Any place in Group II (West Indian); or
In Group I (American and Mediterranean); or
In Group III (South African); or
In Group VII.

TABLE—continued.

| | |
|--|--|
| <p>GROUP III. (South African.)</p> <p>South Africa, including— Cape of Good Hope. Natal. Griqualand West. St. Helena.</p> | <p>Any place in Group III (South African); or In Group I (American and Mediterranean); or In Group V (Australasian); or In Group VII.</p> |
| <p>GROUP IV. (West African.)</p> <p>West African Colonies, including— Sierra Leone. Gambia. Gold Coast. Lagos.</p> | <p>Any place in Group IV (West African); or In Group I (American and Mediterranean); or In Group II (West Indian); or In Group III (South African); or In Group VII.</p> |
| <p>GROUP V. (Australasian.)</p> <p>Australian Colonies, including— New South Wales. Queensland. Tasmania. South Australia. Victoria. Western Australia. New Zealand. Fiji. Falkland Islands.</p> | <p>Any place in Group V (Australasian); or In Group I (American and Mediterranean); or In Group III (South African); or In Group VII.</p> |
| <p>GROUP VI.</p> <p>India, as defined by the Army Act, and including— Aden and Perim. Mauritius. Ceylon. Hong Kong. Straits Settlements. Labuan.</p> | <p>Any place in Group VI; or In Group I (American and Mediterranean); or In Group III (South African); or In Group V (Australasian); or In Group VII.</p> |
| <p>GROUP VII.</p> <p>Channel Islands and Isle of Man.</p> | <p>Any place in Group VII.</p> |

This rule shall not authorise any removal from a prison in the United Kingdom to a prison elsewhere.

This rule is rendered necessary by Army Act, s. 65 (1), (c), under which a prisoner can only be confined in any authorised prison in any part of Her Majesty's dominions other than that in which the sentence was passed, and other than the United Kingdom, if the prison is prescribed.

The main object of this rule, as regards a colony where there is no military prison, is to enable a prisoner to be removed with or sent to his regiment if the regiment is serving in that colony, but not to allow prisoners in any other case to be sent to that colony. No prisoners will be committed or removed to a colony where troops are not serving, without the consent of the government of that colony.

Prisoners will not, except for special reasons which must be at once reported to a superior authority for the information of the Secretary of State for War, be removed to a *military* prison in any place if they could not be removed under this rule to an *authorised* prison in that place.

The Isle of Man, Channel Islands, and Cyprus are declared to be colonies for the purpose of imprisonment by the Army Act, s. 187 (2), 190 (23).

PART III.—SUPPLEMENTAL.

130. Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office for the purpose of these rules, may be exercised by, or done by, to, or before any other person for the time being authorised in that behalf according to the custom of the service.

Exercise of powers vested in holder of military office.

See Army Act, s. 171.

131. In any case not provided for by these rules such course will be adopted as appears best calculated to do justice.

Cases unprovided for.

132. (A) The forms in the appendices to these rules should be followed in all cases in which they are applicable, and when used shall be valid in law, but a deviation from such forms will not, by reason only of such deviation, render any charge, warrant, order, proceedings, or other document invalid.

Forms in Appendices.

(B) An omission of any such form will not, by reason only of such omission, render any act or thing invalid.

(C) The notes to and instructions in the forms will be considered as instructions which it is expedient to follow in all cases to which such notes and instructions apply.

133. In these rules, unless the context otherwise requires—

Definitions.

(A) The expression “proper military authority,” when used in relation to any power, duty, act, or matter, means such military authority as, in pursuance of Her Majesty’s Regulations or the custom of the service, exercises or performs that power or duty or is concerned with that act or matter.

(B) The expression “commander-in-chief” means, as regards India, the Commander-in-Chief in India.

(C) The expression “Army Act” includes any Act, whether passed before or after the date of these rules, which amends or applies the Army Act; also any Act, whether passed before or after the date of these rules, which enacts an offence which is triable by court-martial.

(D) Other expressions have the same meaning as if these rules formed part of the Army Act, and accordingly words in the singular number include the plural, and words in the plural number include the singular, and the masculine gender includes the feminine gender.

(C) See, for instance, the Volunteer Act, 1863, the Yeomanry Acts, the Reserve Forces Act, 1882, and the Militia Act, 1882.

(M.L.)

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(D) See particularly s. 190, and note thereto. This rule does not extend to proceedings and commitments and other documents, so that it will be necessary, for instance, to specify *calendar* months. See Q.R., Sect. VI, para. 108.

Construc-
tion of
rules.

134. (A) Time, for the purposes of any proceeding or other matter under these rules, shall be reckoned exclusive of Sunday, Good Friday, and Christmas Day, but any time reckoned for the purposes of Rule 6, or of any punishment or of any deduction of pay, shall include those days.

(B) Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel, unless such authority, on account of military exigencies or otherwise, dispenses with the writing.

(C) These rules shall apply to a person subject to military law as an officer in like manner, so nearly as circumstances admit, as if he were an officer, and to a person subject to military law as a soldier in like manner, so nearly as circumstances admit, as if he were a soldier, subject nevertheless to the restrictions contained in the Army Act, and to this qualification—that nothing in these rules shall confer on any person not an officer or soldier any jurisdiction or power as an officer or soldier.

(D) Nothing in these rules shall be construed to be contrary to or inconsistent with any provision of the Army Act.

(C) *Subject to military law as an officer.*—See Army Act, s. 175 (7), (8), 176, (9), (10).

Application
of rules to
Channel
Islands, and
Isle of Man.

135. These rules shall, save as otherwise expressly provided, apply to the Channel Islands and the Isle of Man in like manner as if they were part of the United Kingdom.

The Channel Islands and Isle of Man are declared to be Colonies for the purpose of imprisonment. See Army Act, s. 187 (2), and Rule 129.

Extent of
application
of rules.
Short title.

136. These rules shall apply in every place, whether within or without Her Majesty's dominions.

137. These rules may be cited as the Rules of Procedure, 1893.

Commence-
ment of
rules.

138. (A) The foregoing rules shall, if promulgated in any general order in any place, come into full force in that place from and after the date named in such general order, and so far as they are not already in operation on the first day of January next after the date thereof shall come into operation on that day; and on the day on which these rules come into operation in any place the

Rules of Procedure, 1881, so far as they are then in force, shall determine.

(B) Any court-martial, proceeding, or thing held, done, or commenced under the Rules of Procedure, 1881, shall be as valid, and may be completed and carried into effect as if the said rules were still in force.

Her Majesty has made the foregoing rules in pursuance of the Army Act, and those rules will therefore be observed by all persons concerned.

(Signed) H. CAMPBELL-BANNERMAN.

*War Office,
13th September, 1893.*

The foregoing rules are to be observed by the Royal Marine Forces when subject to the Army Act, until further rules are made in pursuance of section seventy of the said Act.

(Signed) SPENCER.

*Admiralty,
18th September, 1893.*

(Signed) A. H. HOSKINS.

Appendices to Rules of Procedure, 1893.

FIRST APPENDIX.

FORMS OF CHARGES.

NOTE AS TO USE OF FORMS OF CHARGES.

App. I. (1.) Every charge-sheet will begin as shown in the forms in Part I of the forms of charges, which are given as examples.

The description of an officer or soldier of the regular forces by his rank and corps is a sufficient averment that he is an officer or soldier, and that he is amenable to military law. In other cases, words must be added to show that the person is amenable to military law. (See Rule 10.)

(2.) The commencement of the charge-sheet (according to the form in Part I) will be followed by the charge or charges.

(3.) Each charge will consist of two parts : a statement of the offence, and a statement of the particulars. (Rule 11 (B).)

(4.) The statement of the offence will be in one of the forms in Part II.

(5.) Where two or more words or expressions occur in Part II, bracketed together one under the other, the particular word or expression should be used which most accurately describes the offence which appears to the officer framing the charge to be capable of proof by legal evidence.

(6.) Where the officer framing the charge is doubtful whether the offence so capable of being proved by legal evidence is more accurately described by one word, or expression, or by another, he may frame two or more alternative charges, each charge containing one of the words or expressions which appear to the officer to be applicable to the facts as capable of proof.

(7.) Where two or more of the words or expressions bracketed together appear, when coupled together with the word "and," accurately to describe the offence, the charge may couple together such words or expressions ;

but in no case must the charge couple with the word "or" two or more of the words or expressions bracketed together. (See Rule 11 (A).) App. I.

(8.) For example, a man may be charged with making away with his arms, ammunition, *and* necessities; but a charge for making away with his arms, ammunition, *or* necessities will be a bad charge.

(9.) A man should not be charged, however, with making away with by pawning *and* selling his arms and necessities, as in such case he is charged with at least two distinct offences, which ought to be included in at least two distinct charges, one for making away with by *pawning* his arms and necessities, the other for making away with by *selling* his arms and necessities; but he may, if desirable, be charged in four distinct charges: one for pawning his arms, another for pawning his necessities, a third for selling his arms, and a fourth for selling his necessities.

(10.) In the former example (para. 8) the offence is the sale of some article which he is prohibited from selling, and is the same offence although committed in respect of different articles. In the second example (para. 9) there are two distinct offences of making away with his articles—(a) by pawning, (b) by selling—although committed in respect of the same objects—arms and necessities.

(11.) In a few cases, shown in italics bracketed thus [] (as for instance, in s. 4 (1 *b*), s. 6 (1), (*e*), (*g*), and (*h*), and s. 24), words may be inserted in the charge which are not in the Act. In these cases the Act contains a general expression such as "other person," or "other place," or "other means," and the officer framing the charge must omit these words, and insert a description of the person, place, or means.

(12.) Words inserted in brackets, thus [], without italics, must be adopted or not according to circumstances. For example, if the offender was not on active service, the words, "when on active service," must be omitted.

(13.) In some cases (for example, s. 10 (4), s. 14, s. 15 (3), s. 16, and ss. 18, 27 (3) (4), and 37), the offence can only be committed by an officer or by a non-commissioned officer or by a soldier. The forms of charge do not contain any reference to this fact, inasmuch as it will appear from the commencement of the charge whether the prisoner is or is not an officer, non-commissioned officer, or soldier, and therefore capable of committing the offence. Care, however, must be taken not to charge an officer with an offence which a soldier only can commit, nor a soldier with an offence which an officer only can commit. In some cases the offence, even though not expressed in the Act to

App. I. be limited to an officer or soldier, can, from the nature of things, only be committed by an officer or soldier. For example, the offence in s. 4 (1) (a) can only be committed by an officer, while the offence of losing regimental necessaries (s. 24) can only be committed by a soldier.

(14.) The statement of the offence in each charge will be followed by the appropriate statement of particulars, commencing with the words "in that he," &c., or "in having," &c., and stating in brief ordinary language what the prisoner is alleged to have done.

(15.) The words "in that he" will be followed by the verb in the past tense; the words "in having" will be followed by the past participle. The sentence stating the particulars will be framed more easily sometimes in the one form, sometimes in the other.

(16.) In the case of several charges, the particulars in one charge may refer to the particulars in another (Rule 11 (E)); as, for example, "in having done the acts alleged in the particulars to the first charge," or "in that, at the place and time aforesaid, he was deficient in the necessaries above mentioned in the second charge, which it was his duty to have." If the prisoner is acquitted on any charge in which full particulars were set out, and is convicted on a charge which referred to those particulars, the particulars referred to must be treated as having been set out in full in the charge on which the prisoner is convicted, and must be set out in full in any record of conviction in which the particulars are set out.

(17.) The statement of particulars should specify all the ingredients necessary to constitute the offence: for example, if the charge is under s. 9 (2), for disobeying a lawful command, the "particulars" must state the command, and show that it was given by a superior officer, and also how the prisoner disobeyed the command; while, if the charge is under s. 9 (1), the "particulars" should also show how the command was given personally, and how the prisoner showed a wilful defiance of authority.

(18.) The "particulars" should always give a general description of the place where the offence was committed, such as the station or town or "the line of march," and, if it is material to the charge and is known, the exact place. The prepositions "near" or "between" may be used (for instance, "at or near," "between") to assist in describing a place not exactly known, but they must never be used where the exact place is of the essence of the offence.

(19.) The "particulars" should always state the date at which the offence was committed. If the exact date or time is unknown, the offence may be stated as having been

committed "on or about" a particular day or time. This must never be done where the time is of the essence of the offence, as, for example, the case of absence without leave or being drunk on a post. App. I.

(20.) In some cases the offence may be stated with most accuracy as having been committed between two days or between two times ; as, for instance, in the case of absence without leave, or of quitting a post ; in other cases "between" may be used in consequence of the exact day or exact time not being known.

(21.) The words "or near" and "or about" and "between" should never be used unless it is impossible to express the exact place or time, or the exact place or time is clearly unimportant, or unless the word "between" is the most accurate expression of the place or time.

(22.) In many cases, as, for instance, where the prisoner's defence is an alibi, the time and place may be of the utmost importance in proving that alibi, although it is not the essence of the offence.

(23.) There must be added at the end of the "particulars" a statement of any expenses, loss, or damage in respect of which the court-martial will be asked to award compensation under Section 137 or 138 (Rule 11 (F)). For example, there may be added to the "particulars" in the case of a charge of fraudulent enlistment, an averment to the effect that the prisoner thereby obtained a free kit, value* pounds, and in the case of a charge under s. 10 (2) or (3), that the prisoner thereby damaged's coat, to the value of shillings, and's watch to the value of shillings ; and other statements may be made, according to the facts.

(24.) If, however, the expenses, loss, or damage were caused by an act or omission which constitutes another offence, specially specified in the Act, that act or omission should be charged as a separate offence ; for example, if a man deserts and is deficient in his regimental necessaries, he should be charged in a separate charge for loss by neglect of his necessaries. It would not be proper to state it as a consequence of the desertion, or to award compensation for it upon a conviction for desertion only.

(25.) A charge for an offence under the Acts relating to the auxiliary forces or reserve forces, or any other Act other than the Army Act must, in accordance with the Rules of Procedure 11 and 133 (c), follow as nearly as possible the words of the Act ; and where the enactment is in the alternative, each charge must, as in the following forms, state only one of the alternatives.

* See Q.R., Sect. VI, paras. 86-88.

App. I.

FORMS OF CHARGES.

PART I.

Commencement of Charge-Sheet.

The prisoner [*number, rank, name, battalion, regiment*]
a soldier [officer] of the regular forces,

or,

The prisoner [*rank, name*] an officer of the regular forces
on the active list on half-pay,

or,

The prisoner [*rank, name*] retired pay [*or pensioner*]
employed on military service under the orders of [*rank, name*]
an officer of the regular forces,

or,

The prisoner, major-general [*or other rank, name*]
commanding [*or otherwise on full pay*],

or,

The prisoner [*number, rank, name*] a militiaman, of the
regiment, out for training [*or embodied or otherwise subject to military law*],

or,

The prisoner [*name, description*] being a follower of the
forces, is charged with—

Where the position of the prisoner, as respects his conditions of service, changed between the time when he committed the offence and the time when he is charged; as, for example, if the training period of a militiaman has expired, or if a soldier has been discharged and therefore ceased to be subject to military law, the commencement of the charge will run as follows:—

The prisoner [*name*] is charged with having, while being
[*number, rank*] of the battalion, regiment, a
militiaman out for training [*or, number, rank*] of the
battalion, regiment, [a soldier of the regular forces]
committed the following offence [offences], namely,

PART II.

Statement of Offence.

OFFENCES IN RESPECT OF MILITARY SERVICE.

Section 4.

- (1a.) Shamefully { abandoning
{ delivering up { a garrison.
a place.
a post.
a guard.
- (1b.) Using { compel { a governor,
means { induce { a com-
to { { manding
{ officer
{ [or other
{ person } shamefully { abandon { a garrison,
to { deliver { a place,
up { a post,
a guard, } which it was
his duty to
defend.
- (2.) Shamefully casting away his { arms
ammunition } in the presence of the enemy.
tools
- (3a.) Treacherously { holding correspondence with } the enemy.
{ giving intelligence to
- (3b.) Treacherously { sending a flag of truce to the enemy.
Through cowardice }
- (4a.) Assisting the enemy with { arms.
ammunition.
supplies.
- (4b.) Knowingly { harbouring
protecting } an enemy not being a prisoner.
- (5.) When a prisoner of war, voluntarily { serving with } the enemy.
aiding
- (6.) Knowingly doing, when on active service, an act calculated to imperil the success of { Her Majesty's forces.
{ part of Her Majesty's forces.
- (7.) Misbehaving
Inducing others to } before the enemy in such manner as to show cowardice.
misbehave }

Section 5.

- (1.) When on active service, without { in order to secure prisoners.
orders from his superior officer, { in order to secure horses.
leaving the ranks { on pretence of taking wounded men to the rear.
- (2.) When on active service { destroying { property without orders from his superior
wilfully { damaging } officer.
- (3a.) When on active service, being taken prisoner { by want of due precaution.
through disobedience of orders.
through wilful neglect of duty.
- (3b.) After being taken prisoner when on active service, failing to rejoin Her Majesty's service when able to rejoin the same.
- (4.) When on active service, without { holding correspondence with } the enemy.
due authority { giving intelligence to
sending a flag of truce to }
- (5.) When on active service { by word of mouth } spreading reports
in writing { calculated to } alarm.
by signals { create unneces- } despondency.
[otherwise] sary
- (6.) When on active service { in action } using words { alarm.
previously to going { calculated to } despondency.
into action to create }

Section 6.

- (1A.) [When on active service,] leaving his commanding officer to go in search of plunder.

- (1b.) [When on active service,] leaving his { guard
piequet
patrol
post } without orders from his superior officer.
- (1c.) [When on active service,] forcing a safeguard.
- (1b.) [When on active service,] { forcing
striking } a soldier when acting as sentinel.
- (1a.) [When on active service,] { the provost-
marshal
an assistant
provost-
marshal
an officer
a non-com-
missioned
officer
[other per-
son] } legally exercising authority } under on behalf of { the provost-
marshal.
- (1b.) [When on active service, and] { the provost-
marshal
an assistant
provost-
marshal
an officer
a non-com-
missioned
officer
[other per-
son] } legally exercising authority } under on behalf of { the provost-
marshal.
- (1a.) [When on active service,] doing { provisions } to the forces.
- (1b.) [When on active service,] { violence to a person bringing
supplies } of an inhabitant of } the country in which
committing an offence } of a resident in } he was serving.
- (1c.) [When on active service,] { house
[other place] } in search of plunder.
- (1h.) [When on active service,] { discharging firearms
drawing swords
beating drums
making signals
using words
[any means whatever] } intentionally occasioning false alarms { in action.
on the march.
in the field.
[elsewhere.]
- (1a.) [When on active service,] { treacherously making
parole
watchword
countersign } to a person not entitled to receive it.
- (1b.) [When on active service,] { treacherously giving a
parole
watchword
countersign } different from what he received.
- (1j.) [When on active service,] { detaining
appro-
priating
to his
own } { contrary to
orders
issued in
that respect } { provisions
supplies } proceeding to the forces.
- (1k.) [When a soldier acting as a sentinel] { sleeping on his post.
being drunk on his post.
leaving his post before he was regularly relieved.
- (2a.) By { discharging firearms
drawing swords
beating drums
making signals
using words
[any means whatever] } negligently occasioning false alarms { in action.
on the march.
in the field.
[elsewhere.]
- (2a.) Making known the { parole
watchword
countersign } to a person not entitled to receive it.
- (2b.) Without good and sufficient cause { parole
watchword
countersign } different from what he received.

MUTINY AND INSUBORDINATION.

Section 7.

- (1.) { Causing
Conspiring with other
persons to cause } a mutiny } in forces belonging { regular forces.
sedition } to Her Majesty's { reserve forces.
auxiliary forces.
navy.
- (2a.) Endeavouring to seduce a { regular forces
person in Her Majesty's { reserve forces
auxiliary forces } from allegiance to Her Majesty.
navy
- (2b.) Endeavouring to persuade { regular forces
a person in Her Majesty's { reserve forces
auxiliary forces } to join in { a mutiny.
sedition.
navy
- (3a.) Joining in { a mutiny
sedition } in forces belonging to Her Majesty's { regular forces.
reserve forces.
auxiliary forces.
navy.
- (3b.) Being present at and { a mutiny } in forces belonging to Her { regular forces.
not using his utmost { sedition } Majesty's { reserve forces.
endeavours to sup- { } auxiliary forces.
press { } navy.
- (4.) After { an actual mutiny
coming to the { an intended mutiny
know- { actual sedition
ledge of { intended sedition } in forces } regular forces
belonging { reserve forces
to Her { auxiliary forces
Majesty's { navy } failing to inform
without delay
his commanding
officer of the
same.

Section 8.

- (1.) { Striking
Using violence to
Offering violence to } his superior officer, being in the execution of his office.
- (2a.) [When on active service,] { striking
using violence to } his superior officer.
offering violence to
- (2b.) [When on active service,] using { threatening
insubordinate } language to his superior officer.

Section 9.

- (1.) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2.) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10.

- (1.) When concerned in a fray { refusing to obey
striking
using violence to } an officer who ordered him
offering violence to } into arrest.
- (2.) { Striking
Using violence to } a person in whose custody he was placed.
Offering violence to
- (3.) Resisting an escort whose duty it was { to apprehend him.
to have him in charge.
- (4.) Breaking out of { barracks.
camp.
quarters.

Section 11.

- (1.) Neglecting to obey { general
garrison } orders.
{ other }

- (3.) When in command of a guard failing
- | | | | |
|--|--|---|--|
| { as soon as he was relieved from his duty within twenty-four hours after a prisoner was committed to his charge } | to give in writing to the officer to whom he was ordered to report the | { prisoner's name. prisoner's offence so far as known to him. name of the officer rank of the [person] written account given him by the } | { by whom the prisoner was charged. by whom the prisoner was committed to his custody. } |
|--|--|---|--|

Section 22.

- (1.) When in { arrest confinement prison } { [other lawful custody] } escaping. attempting to escape.

OFFENCES IN RELATION TO PROPERTY.

Section 23.

- (1.) Conniving at the exaction of an exorbitant price for { house } stall } let to a sutler.
- (2.) { Laying a duty upon Taking a fee in respect of Taking an advantage in respect of Being interested in } { the sale of provisions the sale of merchandise } brought into { a garrison a camp a station a barrack a [place] } in which he has { com-mand. autho- rity. } { the sale of the purchase of } provisions { stores } for the use of some of Her Majesty's forces.

Section 24.

- (1.) { Making away with by Being concerned in making away with by } { pawning selling destruction [otherwise] } { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- (2.) Losing by neglect { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- (3.) Making away with by { pawning selling destruction [otherwise] } a military decoration granted him.
- (4.) Wilfully injuring { his arms. his ammunition. his equipments. his instruments. his clothing. his regimental necessaries. a horse of which he had charge. }
- { property belonging to }
- { a comrade. an officer. a regimental mess. a regimental band. a regimental institution. }
- { public property. }
- (5.) Ill-treating a horse used in the public service.

Section 25.

- (1.) In a {
 report
 return
 muster roll
 pay list
 certificate
 book
 route
 [other
 document]
 } made by him
 signed by him
 of the contents of
 which it was his
 duty to ascertain
 the accuracy
 } knowingly making
 being privy to the
 making of
 } { a false statement.
 a fraudulent state-
 ment.
 an omission with
 intent to defraud.
- (2.) { Knowingly, and
 with intent to } injure some { suppressing
 person { making away with } a document
 defraud { defacing { which it } preserve.
 altering { alter } was his } produce.
 duty to }
- (3.) Where it was his official duty to make a declaration respecting any matter knowingly making a false declaration.

Section 26.

- (1.) When signing a document
 relating to {
 pay
 arms
 ammunition
 equipments
 clothing
 regimental
 necessities
 provisions
 furniture
 bedding
 blankets
 sheets
 utensils
 forage
 stores
 } leaving in blank a material part for
 which his signature was a voucher.
- (2.) { Refusing to
 By culpable neglect } make { a report } which it was his duty to { make
 omitting to } send { a return } send.

Section 27.

- (1.) Making a false accusation against { an officer } knowing such accusation to be
 a soldier false.
- (2.) In making a complaint { knowingly making a false statement } an officer.
 where he thought affecting the character of a soldier.
 himself wronged { knowingly and wilfully suppressing } material facts.
 a material fact.
- (3.) Falsely stating to his { been guilty of } desertion.
 commanding officer { served in and } fraudulent enlistment.
 that he had { been dis- } desertion from the navy.
 charged from { a portion of the regular forces.
 a portion of the reserve forces.
 a portion of the auxiliary forces.
 the navy.
- (4.) Making a wilfully false { military officer } in respect of the prolongation of furlough.
 statement to a { justice }

OFFENCES IN RELATION TO COURTS-MARTIAL.

Section 28.

- (1.) When duly { summoned } as a witness before a court-martial, making default
 ordered to attend } in attending.
- (2.) Refusing to { take an oath legally required by a court-martial to be taken.
 make a solemn declaration legally required by a court-martial to be
 made.
- (3.) Refusing to produce { power } legally required by a court-martial to be produced
 a document in his { control } by him.
- (4.) Refusing, when a witness, to answer a question to which a court-martial might legally require an answer.

- (5.) Being guilty of contempt of a court-martial by { using { insulting threatening } language.
 { causing { an interruption } in the proceedings of such
 { a disturbance } court.

Section 29.

- (1.) Wilfully giving { oath { a court-martial.
 false evidence { solemn de- { a court
 when exam- { clarations } before { an officer } authorised by the Army Act to
 ined on } administer an oath.

OFFENCES IN RELATION TO BILLETING.

Section 30.

- (1.) Being guilty of ill- { violence { of the occupier } person } was billeted.
 treatment by { extortion { of a house
 making disturbances { in which a } horse }
 in billets }
- (2.) { Refusing { on complaint { violence by { under his command, of
 { Neglecting { and proof of { extortion by { the occupier of a house
 { making dis- { an officer { in which a { person
 { turbances { a soldier { horse
 in billets } was billeted to cause
 by } compensation to be
 } made for the same.
- (3.) Failing to com- { payment of the { he { had been
 ply with the { just demands { his horse { billeted.
 provisions of { of a person on { an officer } under his command
 the Army Act { whom { { an officer } under his
 with respect { making up and { the horse { a soldier } command
 to the { transmitting of { of { a soldier }
 to a person on { an account of { }
 whom { the money due { }
 } to a person on { }
 whom }
- (4.) Wilfully demanding billets which were not actually required { person } entitled to be
 for some { horse } billeted.
- (5.) { Taking { from a { money } for { excusing } a person
 { Knowingly suffering to be taken } person { a reward } for { relieving }
 from { his liability { in respect { billeting } of { officers.
 a part of his liability } of the { quartering } of { soldiers.
 } horses.
- (6a.) { Offering { menace to { a constable } to make him give billets contrary to
 Using { compulsion on { a civil officer } the Army Act.
- (6b.) { Using { menace to { a constable { tending { deter { him from { his duty under
 { Offering { to { a constable { to { discour- { perform- { the provisions
 { compul- { a civil { officer { tending to induce him to do { rage { ing part { of the Army
 sion on } officer { something contrary to { of { of the Army
 } Act relating
 } to billeting.
- (7.) { Using { menace to { a person { to receive without his
 { Offering { compulsion { tending to ob- { consent, a { person
 on { him { blige { not duly billeted upon { horse } the provisions of
 } to furnish some accom- { him in pursuance of { } the Army Act
 } modation which he is { to furnish some accom- { } relating to billet-
 } not required to furnish { } ing.
 by }

OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

Section 31.

- (1.) Wilfully demanding { carriages { which were not actually required for purposes
 animals } authorised by the Army Act.
 vessels }

- (2.) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards { the payment of sums due for carriages.
the weighing of the load.
to travel against the will of the person in charge thereof beyond the proper distance.
to carry against the will of the person in charge thereof a greater weight than he was required by the said provisions to carry.
- (3.) Constraining { a carriage
an animal
a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages } { to carry against the will of the person in charge thereof a greater weight than he was required by the said provisions to carry.
- (4.) Failing to discharge as speedily as practicable { a carriage
an animal
a vessel } { furnished in pursuance of the Army Act relating to the impressment of carriages.
- (5.) { Compelling
Permitting the compelling of } { a person in charge of } { a carriage
an animal
a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages to take thereon } { baggage } { not entitled to be stores } carried.
though not furnished on a requisition of emergency a soldier who was not sick.
- (6.) { Ill-treating
Permitting the ill-treatment of } { a person in charge of } { a carriage
an animal
a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
- (7.) { Using
Offering } { menace to
compulsion on } { a constable } { to make him provide } { a carriage
an animal
a vessel } { which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide.
him from his duty in relation to the providing of } { carriages, animals, vessels.
- (8.) Forcing { a carriage
an animal
a vessel } from the owner thereof.

OFFENCES IN RELATION TO ENLISTMENT.

Section 32.

- (1.) After having been { discharged with disgrace from a part of Her Majesty's forces
dismissed with disgrace from the navy } { enlisting in the regular forces without declaring the circumstances of his } discharge, dismissal.

Section 33.

- (1, 2.) Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested.

Section 34.

- (1.) Being concerned in the enlistment for service in the regular forces of a man when he { knew
had reasonable cause to believe } { such man to be so circumstanced that by enlisting he committed an offence against the Army Act.
- (M.L.)

- (2.) Wilfully contravening { the enactments of the Army Act
[other enactments]
the regulations of the service } in a matter relating to the enlistment { of soldiers of the regular forces.
attestation }

MISCELLANEOUS MILITARY OFFENCES.

Section 35.

- (1.) Using { traitorous } words regarding the Sovereign.
disloyal }

Section 36.

- (1.) Without due authority { verbally in writing by signal [otherwise] } disclosing { the numbers of the position of some forces
some magazines of the forces
some stores of the forces
some preparations for operations of some forces
some orders relating to movements } at such time and in such manner as to have produced effects injurious to Her Majesty's service.

Section 37.

- (1.) Striking } a soldier.
ill-treating }
- (2.) After receiving the { an officer } unlawfully detaining
pay of { a soldier } unlawfully refusing to pay } the same when due.

Section 38.

- (1.) { Fighting
Promoting
Being concerned in
Conniving at fighting } a duel.
- (2.) Attempting to commit suicide.

Section 39.

- (1.) On application being made to him { neglecting refusing } { to deliver over to the civil magistrate to assist in the lawful apprehension of } an officer { accused of an offence punishable by a civil court.
a soldier }

Section 40.

- (1.) { An act
Conduct
Disorder
Neglect } to the prejudice of good order and military discipline.

Section 41.

- (1-4.) { When on active service
In Gibraltar
In some place not in the United Kingdom or Gibraltar and more than one hundred miles as measured in a straight line from any city or town in which he can be tried by a competent civil court for the offence } committing { treason.
murder.
manslaughter.
treason-felony.
rape.
the offence of }
- (5.) Committing a civil offence, that is to say [state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery, with violence, &c., or, in ordinary language, e.g., stealing, injuring property, setting fire to a house, &c.]

Section 155.

| | | | | | | | | |
|--------|---|---|--|---|--|---|--|-------------------------------|
| (1-3). | { Negotiating Acting as agent for Aiding Conniving at | { | the { sale purchase } | { | of a commission in Her Majesty's regular forces. | { | { promotion in retirement from employment in } | Her Majesty's regular forces. |
| | | | the { giving receiving } | | of any valuable consideration in respect of any | | | |
| | | | any exchange made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a | | sum of money { consideration } |  |  |  | has been { given. received. } |
| | | | | | | | | |

ILLUSTRATION OF CHARGE.

Note—The following is an illustration of a complete charge-sheet, with statement of offences and particulars.

CHARGE-SHEET.

The prisoner, No. 153, Private John Smith, 2nd Battalion Devonshire Regiment, a soldier of the regular forces, is charged with—

First: *Using threatening language to his superior officer*— First charge.
in that

at Topsham Barracks, Exeter, on the 20th of June, 1892, he said to Serjeant William Robinson, "I will punch your head," or words to that effect.

Secondly: *Resisting an escort whose duty it was to have him in charge*— Second charge.

in that

at Exeter, on the 20th of June, 1892, he resisted the escort taking him to the guard room, and thereby damaged the trousers of Private James Burn, one of the escort, to the amount of five shillings.

Note.—If the offence of resistance was aggravated by violence, those circumstances of violence should be stated. In that case the second charge above would run thus—

Secondly: *Resisting an escort whose duty it was to have him in charge*—

in that

at Exeter, on the 20th of June, 1892, he resisted the escort taking him to the guard room, and kicked Private John Jones, one of the said escort, and damaged the trousers of Private James Burn, another of the said escort, to the amount of five shillings.

(M.L.)

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The following further Illustrations of Charges will be found useful. They are not part of the Appendix to the Rules of Procedure.

FURTHER ILLUSTRATIONS OF CHARGES.

Note.—The words in brackets in the following illustrations of charges do not necessarily form part of the charge, but are sometimes alternatives, and sometimes are inserted as aggravating or explaining the offence, or for the purpose of the award by the court of stoppages from pay.

Where the words in brackets are “when on active service” they alter the gravity of the charge, and are very material, but are inserted in brackets because the charge will be a good charge without them, although if they are omitted the charge will be for a minor offence.

The words “soldier of the regular forces” in the description of the prisoner are not essential where he is described as belonging to a regiment or battalion in the regular forces.

A second charge may be added to the charge-sheet as an alternative to the first charge in those cases (some of which are mentioned in the notes) where it is doubtful whether the offence committed by the person amounted to one charge or to the other.

No. 1.

CHARGE-SHEET.

Sec. 4 (C).

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Shamefully casting away his arms in the presence of the enemy,
in that he, at , on , when on outlying picquet, and attacked by the enemy, shamefully cast away his rifle, left his picquet, and ran away.

No. 2.

CHARGE-SHEET.

Sec. 4 (7).

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Misbehaving before the enemy in such manner as to show cowardice,
in that he, at , on , during an attack on , and when under the enemy's fire, fell out of the ranks, under pretence of being unable to march further.

No. 3.

CHARGE-SHEET.

Sec. 5 (1).

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
When on active service, without orders from his superior officer, leaving the ranks on pretence of taking wounded men to the rear,
in that he, at , on , when in the ranks, and during an attack upon , without orders from his superior

officer, on pretence of taking to the rear Lieutenant who was wounded, left the ranks.

No. 4.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 5 (2).
 Regiment, a soldier of the Regular Forces, is charged with—
When on active service, without orders from his superior officer,
wilfully destroying property,
 in that he, on , in , and encamped near the village
 of , without orders from his superior officer, wilfully
 set fire to a dwelling-house, situate in the said village.

No. 5.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 6 (1).
 Regiment, a soldier of the Regular Forces, is charged with—
When on active service, leaving his commanding officer to go in
search of plunder,
 in that he, on , when belonging to a force in military occu-
 pation of , and when marching with his battalion under
 Lieutenant-Colonel , through the town of , left
 his commanding officer, and went in search of plunder.

No. 6.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 6 (1c)
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] forcing a safeguard,
 in that he, at , on , in , wilfully, and after
 being duly warned, entered a dwelling-house in street, at
 , in which, by orders of the General commanding, Serjeant
 had been placed as a safeguard, for the protection of
 the occupants and the property therein, and took therefrom five
 bottles of wine, value , or thereabout.

No. 7.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec.
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] forcing a soldier when acting a
sentinel,
 in that he, at , on , after being warned by the
 sentry on No. Post, Guard, not to pass, passed the said
 sentry.

No. 8.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 6 (1f)
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] doing violence to a person bringing
provisions to the forces,
 in that he at , on , assaulted one , a sutler,
 who was bringing into camp bread and vegetables for the use of
 the troops [and forcibly took from him a portion of the same,
 value].

No. 9.

CHARGE-SHEET.

- Sec. 6 (1f).** The prisoner, A.B., sutler, being subject to military law as a soldier by reason of accompanying Her Majesty's troops on active service in Egypt, is charged with—

When on active service committing an offence against the person of a resident in the country in which he was serving,
in that he, at _____, on _____, committed a rape on _____,
of _____.

No. 10.

CHARGE-SHEET.

- Sec. 6 (1f)** The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with—
When on active service committing an offence against the person of an inhabitant of the country in which he was serving,
in that he, at _____, on _____, in Egypt, assaulted _____,
of _____.

No. 11.

CHARGE-SHEET.

- Sec. 6 (1g).** The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] breaking into a house in search of plunder,
in that he, at _____, in [Egypt] _____, on _____, broke open the front door of a dwelling-house No. _____, in _____ street, and entered it in search of plunder.

No. 12.

CHARGE-SHEET.

- Sec. 6 (1h).** The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] by discharging fire-arms, intentionally occasioning false alarms,
in that he, on _____, when on the march with his Battalion between _____ and _____, by intentionally discharging his rifle, occasioned a false alarm.

Note.—If there is a doubt as to whether the discharge of the rifle was intentional, a charge similar to No. 14 can be added as an alternative in the same charge sheet.

No. 13.

CHARGE-SHEET.

- Sec. 6 (1k).** The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with—
When a soldier acting as sentinel [on active service] sleeping on his post,
in that he, at _____, on _____, between 1 and 2 a.m. when sentry on No. _____ Post _____ Guard _____ was asleep.

No. 14.

CHARGE-SHEET.

- Sec. 6 (2a).** The prisoner, No. _____, Private _____, Battalion _____, Regiment, a soldier of the Regular Forces, is charged with—

By discharging fire arms, negligently occasioning false alarms in camp,
 in that he, when encamped with , at , on ,
 by negligently discharging his rifle at about midnight,
 occasioned a false alarm in the said camp.

No. 15.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 7 (1).
 Regiment, a soldier of the Regular Forces, is charged with—

First: Causing a mutiny in forces belonging to Her Majesty's Regular Forces,
 in that he, at , on , in his Barrack Room addressed
 Serjeant , Private , and other soldiers,
 Battalion Regiment, there assembled, in mutinous
 language, by advising them not to turn out at Commanding
 Officer's parade at 10 o'clock next day, in consequence of
 which language they, the said Serjeant , and
 Private , and other soldiers of the said Battalion,
 did not turn out for the said parade.

Secondly: Endeavouring to persuade persons in Her Majesty's Regular Forces to join in a mutiny, Second charge.
 in that he, at , on , stated in the first Sec. 7 (2b).
 charge, endeavoured to persuade Lance-Corporal ,
 Battalion, Regiment, to join in a mutiny, and not to
 mount guard, for which duty he, the said Lance-Corporal, had
 been duly warned.

No. 16.

(Joint Trial.)

CHARGE-SHEET.

The prisoners, No. , Private , Battalion, Sec. 7 (3a).
 Regiment, and No. , Private , Battalion,
 Regiment, soldiers of the Regular Forces, are charged with—
Joining in a mutiny in forces belonging to Her Majesty's Forces,
 in that they, at , on [or about] joined in a mutiny
 by combining among themselves [and with other soldiers of the
] to resist and offer violence to their superior officers in
 the execution of their duty.

Note.—This charge is equally applicable to the case of a single prisoner.

No. 17.

CHARGE-SHEET.

The prisoner, Bombardier , Brigade, Sec. 7 (4).
 Division, Royal Artillery, a soldier of the Regular Forces, is
 charged with—

After coming to the knowledge of an intended mutiny in forces belonging to Her Majesty's Forces, failing to inform without delay his commanding officer of the same,
 in that he, at , on , was present in the public-house
 known as the Red Lion, where Bombardier , Gunner
 , and other soldiers of Battery, Brigade,

Division Royal Artillery were assembled, and, in his
 hearing, agreed to cut up and destroy the harness belonging to
 the said Battery, and failed to inform his commanding officer
 thereof.

No. 18.

CHARGE-SHEET.

- Sec. 8 (1). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Striking his superior officer, being in the execution of his office,
 in that he, at , on , struck with his fist in the face
 Corporal , Battalion, Regiment, who was
 at the time in command of an escort taking prisoners to the
 guard-room.

No. 19.

CHARGE-SHEET.

- Sec. 8 (2a). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] offering violence to his superior officer,
 in that he, at , on , when checked by Corporal
 Battalion, Regiment, attempted to strike the
 said corporal.

No. 20.

CHARGE-SHEET.

- Sec. 8 (2b). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] using threatening language to his superior officer,
 in that he, at , on , after having been awarded a
 punishment by his commanding officer, said to Serjeant
 Battalion, Regiment, "I'll be revenged on you
 for this, yet."

No. 21.

CHARGE-SHEET.

- Sec. 9 (1). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Disobeying in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer, in the execution of his office,
 in that he, at , on , when personally ordered
 by Captain , Battalion, Regiment, upon com-
 manding officer's parade, to take up his rifle and fall in, did not
 do so, divesting himself at the same time of his waist belt, and
 saying, "I'll soldier no more, you may do what you please."

No. 22.

CHARGE-SHEET.

- Sec. 9 (2). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] disobeying a lawful command given by his superior officer,
 in that he, at , on , did not leave the canteen
 when ordered to do so by Corporal , Battalion,
 Regiment.

No. 23.

CHARGE-SHEET.

- 10 (1) The prisoner, Captain , Battalion, Regiment,
 an officer of the Regular Forces, is charged with—

When concerned in a quarrel, refusing to obey an officer who ordered him into arrest,
 in that he, on , in the ante-room of the officers' mess at
 , after having quarrelled with and struck Lieutenant
 , Battalion, Regiment, on being ordered
 into arrest by Lieutenant , Battalion,
 Regiment, refused to obey the order.

No. 24.

CHARGE-SHEET.

The prisoner, No. , Corporal , Dragoons, Sec. 10 (2).
 a soldier of the Regular Forces, is charged with—
Striking a person in whose custody he was placed,
 in that he, at , on , when placed in the
 custody of Police Constable , struck with his waist-belt
 on the head, the said Police Constable.

No. 25.

CHARGE-SHEET.

The prisoner, No. , Drummer , Battalion, Sec. 10 (4).
 Regiment, a soldier of the Regular Forces, is charged with—
Breaking out of barracks,
 in that he, at , on , broke out of barracks, when
 his duty required him to be in barracks.

No. 26.

CHARGE SHEET.

The prisoner, No. , Serjeant , Hussars, Sec. 11.
 a soldier of the Regular Forces, is charged with—
Neglecting to obey camp orders,
 in that he, at , on , bathed in the river ,
 above camp, contrary to a camp order directing all persons to
 abstain from bathing in that part of the river.

No. 27.

CHARGE-SHEET.

The prisoner, William Robinson, being a person subject to Sec. 11.
 military law as an officer by reason of his accompanying Her
 Majesty's Forces on active service in Afghanistan, and holding a
 pass entitling him to be treated on the footing of an officer, is
 charged with—
Neglecting to obey camp orders,
 in that he, on , entered the village of , contrary
 to a camp order directing all persons to abstain from entering that
 village.

No. 28.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 12 (1a)
 Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] deserting Her Majesty's Service,
 in that he, at , on , absented himself from
 Battalion, Regiment, until apprehended at ,
 on , by the civil power, as a stowaway on board the
 steamer , which was about to leave the harbour
 for .

No. 29.

CHARGE-SHEET.

- Sec. 12 (1a). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
[When on active service] attempting to desert Her Majesty's Service,
 in that he, at , on , concealed himself in a back room of a house situate in , and when apprehended by the military police on the same day was partly dressed in plain clothes.

Note.—In the two preceding charges, if the soldier was under orders for active service, the charge will be the same, with the substitution of "under orders for active service" for "on active service."

No. 30.

CHARGE-SHEET.

- Sec. 12 (1a). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Deserting Her Majesty's Service,
 in that he, at , on , absented himself from Battalion, Regiment, until apprehended by the civil power at , on [where he was in civil employment, and dressed in plain clothes].

No. 31.

CHARGE-SHEET.

- Sec. 12 (1a). The prisoner, No. , Private , Dragoons, a soldier of the Regular Forces, is charged with—
[When under orders for active service] Deserting Her Majesty's Service,
 in that he, at , on , when under orders for embarkation for active service, absented himself from the of until the of with intent to avoid such embarkation.

No. 32.

CHARGE-SHEET.

- Sec. 13 (1). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Fraudulent enlistment,
 in that he, at , on , when belonging to the Battalion, Regiment, without having fulfilled the conditions enabling him to enlist, enlisted into Her Majesty's Regular Forces for general service [or for service in the regiment], thereby obtaining a free kit, value .

No. 33.

CHARGE-SHEET.

- Sec. 14 (1). The prisoner, No. , Private , Dragoons, a soldier of the Regular Forces, is charged with—
Assisting a person subject to Military Law to desert Her Majesty's Service,
 in that he, at , on [or about] , well knowing that Private , Battalion, Regiment, was about to desert, provided him with a suit of plain clothes.

No. 34.

CHARGE-SHEET.

The prisoner, No. , Private , Lancers, Sec. 15 (1).
 a soldier of the Regular Forces, is charged with—
Absenting himself without leave,
 in that he, at , absented himself from tattoo roll call
 on till 7-30 a.m. on

No. 35.

CHARGE-SHEET.

The prisoner, No. , Gunner , Brigade, Sec. 15 (2).
 Division, Royal Artillery, a soldier of the Regular Forces, is
 charged with—
Failing to appear at the place of rendezvous appointed by his
commanding officer,
 in that he, at , on , when in billet in the
 town of , failed to appear at the market square in that
 town, the place of rendezvous duly appointed by , his
 commanding officer.

No. 36.

CHARGE-SHEET.

The prisoner, No. , Bugler , Battalion, Sec. 15 (3).
 Regiment, a soldier of the Regular Forces, is charged with—
When in camp being found beyond the limits fixed by Regimental
Orders without a pass from his commanding officer,
 in that he, when encamped near Exeter, was found on ,
 in Topsham, without a pass from his commanding officer.

No. 37.

CHARGE-SHEET.

The prisoner, Lieutenant , Regiment, an officer Sec. 16.
 of the Regular Forces, is charged with—
Behaving in a scandalous manner unbecoming the character of
an officer and a gentleman,
 in that he, at , on , in payment of his
 mess account, gave Mr. , the mess man, a cheque for
 31l. on Messrs. Cox & Co., Army Agents, well knowing that he
 had not sufficient funds in the hands of the said Agents to meet
 the said cheque, and having no reasonable grounds for supposing
 that the aforesaid cheque would be honoured when presented.

No. 38.

CHARGE-SHEET.

The prisoner, Captain , Regiment, an officer Sec. 16.
 of the Regular Forces, is charged with—
Behaving in a scandalous manner unbecoming the character of
an officer and a gentleman,
 in that he, at , on , [or between
 and], wrote and sent to his commanding
 officer, Lieut.-Colonel , Regiment, an anony-
 mous letter, in which he made use of the following words:—
 “By stopping leave and overworking your officers and men, you
 make the Regiment a hell upon earth. Your tyrannical conduct

is a matter of general remark, and you may rely on it, unless you change, complaints will be made against you at the next General's Inspection."

No. 39.

CHARGE-SHEET.

Sec. 17 (a). The prisoner, Captain _____, Army Pay Department, an officer of the Regular Forces, is charged with—

When charged with the care of public money, embezzling the same, in that he, at _____, on _____, [or between _____ and _____],

when charged with the care of public money, having received a cheque for twenty-five pounds to cash for public purposes, applied the cash to his own use.

Note.—The particulars should state the acts which are alleged to have been done by the prisoner and to amount to embezzlement.

No. 40.

CHARGE-SHEET.

Sec. 17 (a). The prisoner, Quartermaster _____, Army Hospital Corps, an officer of the Regular Forces, is charged with—

When charged with the care of public goods, fraudulently misapplying the same, in that he, at _____, on [or about] _____, when

charged with the care of ten rugs for hospital use, value _____ or thereabout, used the said rugs for his own bed [gave the same away to Sergeant _____ and Private _____, for their own use].

No. 41.

CHARGE-SHEET.

Sec. 17 (a). The prisoner, No. _____, Corporal _____, Ordnance Store Corps, a soldier of the Regular Forces, is charged with—

When concerned in the care of public goods, stealing the same, in that he, at _____, on [or about] _____, when employed in the care of Ordnance Stores, stole three revolver pistols, value twenty-eight shillings each, part of the said stores.

No. 42.

CHARGE-SHEET.

Sec. 17 (a). The prisoner, No. _____, Staff Serjeant _____, Army Service Corps, a soldier of the Regular Forces, is charged with—

When concerned in the distribution of public goods fraudulently misapplying the same, in that he, at _____, on _____, when concerned in

the distribution of coals to _____ Battalion, _____ Regiment, with intent to defraud, issued four sacks thereof weighing two cwt. each or thereabout, of a total value of _____, or thereabout, to _____, a person not entitled to receive them.

No. 43.

CHARGE-SHEET.

Sec. 18 (1a). The prisoner, No. _____, Private _____, _____ Battalion, _____ Regiment, a soldier of the Regular Forces, is charged with—
Malingering,

in that he, at _____, on _____, [between
and _____], with the intention of evading his duties as a
soldier, counterfeited dumbness.

No. 44.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Hussars, a Sec. 18 (1b).
soldier of the Regular Forces, is charged with—
Feigning disease,
in that he, at _____, on _____, pretended to Surgeon
_____, that he was suffering violent pains in the head
and down his back, whereas he was not so suffering.

No. 45.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion, Sec. 18 (2a)
Regiment, a soldier of the Regular Forces, is charged with—
*Wilfully maiming himself with intent thereby to render himself
unfit for service,*
in that he, at _____, on _____, when sentry on No.
Post _____ Guard, by discharging his rifle wilfully blew off the
fore and middle finger of his right hand.

No. 46.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion, Sec. 18 (1).
Regiment, a soldier of the Regular Forces, is charged with—
*Being wilfully guilty of misconduct by means of which miscon-
duct he delayed the cure of disease,*
in that he, at _____, on _____, [between
and _____], when under medical treatment for syphilitic
sores, tampered with the said sores by the secret application of
bluestone.

No. 47.

CHARGE-SHEET.

The prisoner, No. _____, Private (Lance-Corporal) _____, Sec. 18 (4a).
Hussars, a soldier of the Regular Forces, is charged with—
Embezzling public money,
in that he, at _____, on _____, when entrusted by
Staff-Serjeant Major _____ with the sum of five shillings,
public money, for the purpose of paying for the transmission of
five official telegrams, applied the same for his own use.

No. 48.

CHARGE-SHEET.

The prisoner, No. _____, Private _____, Battalion, Sec. 18 (4).
Regiment, a soldier of the Regular Forces, is charged with—
First, Stealing goods, the property of a comrade,
in that he, in the Cambridge Barracks at Portsmouth, on _____,
stole a watch, the property of Charles Williams, a
private in the same regiment:
*Secondly, Receiving, knowing them to have been stolen, goods
the property of a comrade,*
in that he, at Portsmouth, at the place and on the day aforesaid,

was in possession of a watch stolen from the said Charles Williams, which he knew to have been stolen.

No. 49.

CHARGE-SHEET.

Sec. 18 (5a). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Such an offence of a fraudulent nature as is mentioned in subsection 5 of Section 18 of the Army Act,
 in that he, at , on [or about] , when employed as an assistant in the regimental canteen, with intent to defraud, added water to a cask of ale belonging to the stores of the said canteen.

No. 50.

CHARGE-SHEET.

Sec. 19. The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
 [When on active service] *Drunkenness on duty*, in that he, at , on , when on duty [on parade] was drunk.

Note.—A soldier drunk when on the line of march may be tried for being drunk on duty. See chapter III, para. 27.

In order to enable a court-martial to award summary punishment, it is essential to allege "when on active service."

If a soldier was on special duty, *e.g.*, parade or picquet, that special duty should be stated.

No. 51.

CHARGE-SHEET.

The prisoner, No. , Drummer , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
 [When on active service] *Drunkenness*
 in that he, at , on , was drunk
 [having been previously warned for duty].

Note.—When the offence is committed not on duty, but under such circumstances as to constitute an aggravated offence of drunkenness, it is essential, if the prisoner is to be charged with an aggravated offence of drunkenness, to allege that he had been warned for duty, or by reason of drunkenness was found unfit for duty.

If he has been warned for special duty, *e.g.*, night picquet, or in aid of the civil power, the nature of that special duty should be stated.

Sec. 20 (1). In order to enable a court-martial to award summary punishment, it is essential to allege the facts showing the offence to be an aggravated offence of drunkenness, and also to allege "when on active service."

No. 52.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Regiment, a soldier of the Regular forces, is charged with—
When in command of a picquet wilfully releasing, without proper authority, a prisoner committed to his charge,
 in that he, at , on , when in command of a picquet patrolling the town, released Private , Battalion, Regiment, a prisoner who had been committed to his charge by provost-serg

No. 53.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 20 (1).
 Regiment, a soldier of the Regular Forces, is charged with—
When in command of a guard, without proper authority,
releasing a prisoner committed to his charge,
 in that he, at , on , when in command
 of the barrack guard, without authority released Corporal
 , Battalion, Regiment, a prisoner committed
 to his charge.

No. 54.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 20 (2).
 Regiment, a soldier of the Regular Forces, is charged with—
Wilfully allowing to escape a prisoner committed to his charge,
 in that he, at Liverpool, on , when in command of
 an escort conducting to Dublin Private
 Battalion, Regiment, a prisoner committed to his charge,
 without valid cause left the prisoner and escort, when the said
 prisoner escaped.

Note.—Upon this charge a court-martial is competent to find the
 prisoner guilty of "without reasonable excuse, allowing the prisoner to
 escape." Sec. 56 (5) Army Act.

No. 55.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 20 (2).
 Regiment, a soldier in the Regular Forces, is charged with—
Without reasonable excuse allowing to escape a prisoner com-
mitted to his charge,
 in that he, at , on , when conducting to
 his Battalion, Private Battalion,
 Regiment, a prisoner committed to his charge [allowed a crowd
 to assemble round the prisoner without taking reasonable means
 to prevent it, and thus] permitted the escape of the said prisoner.

No. 56.

CHARGE-SHEET.

The prisoner, No. , Private , Dragoon Sec. 22.
 Guards, a soldier of the Regular Forces, is charged with—
When a prisoner under escort escaping,
 in that he, at , on , when a prisoner pro-
 ceeding to escaped.

No. 57.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 22.
 Regiment, a soldier of the Regular Forces, is charged with—
When a prisoner under escort attempting to escape,
 in that he, at , on , when a prisoner under
 escort proceeding to , broke away from his escort and
 attempted to escape.

No. 58.

CHARGE-SHEET.

- Sec. 24 (1). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
 First, *Making away with by pawning his clothing and regimental necessities,*
 in that he, at , on [or about] , pawned to , for the sum of five shillings, one pair of ankle boots and two brushes, value , and one flannel shirt:
 Secondly, *Losing by neglect his clothing and regimental necessities,*
 in that he, at the place and on [or about] the day aforesaid, was deficient of the articles of his clothing and regimental necessities specified in the first charge.

Note.—If the prisoner sold his clothing, &c., this same charge can be used with the substitution of “selling” for “pawning.”

The second charge should only be added where there is any doubt about the proof of the pawning or selling being sufficient.

No. 59.

CHARGE-SHEET.

- Sec. 24 (2). The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Losing by neglect his equipments, clothing, and regimental necessities,
 in that he, at , on [or about] was deficient of one waist-belt, value , one serge frock value , and two pairs of socks.

No. 60.

CHARGE-SHEET.

- Sec. 25 (1). The prisoner, No. , Colour-Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
In a document signed by him knowingly making a fraudulent statement,
 in that he, at , on [or about] , [between and] in his capacity as pay-serjeant of , company, Battalion, Regiment, fraudulently entered in his cash account for the month of , 18 , the following item—Washing bills, three pounds four shillings and two pence, whereas the actual amount paid by him in respect of such bills was two pounds fifteen shillings and four pence.

No. 61.

CHARGE-SHEET.

- Sec. 25 (2). The prisoner, No. , Colour-Serjeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Knowingly and with intent to defraud, altering a document which it was his duty to preserve,
 in that he, at , on [or about] [between and] in the Military Savings Bank Form No. 2, statement of deposits and withdrawals for the month of , 18 , altered, with intent to defraud, the figure £2 sterling, representing a

withdrawal made by Private , Battalion,
Regiment, and changed it into £3 sterling.

Note.—The name of the person whom the prisoner intended to defraud should be stated where possible.

No. 62.

CHARGE-SHEET.

The prisoner, No. , Colour-Sergeant , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 25 (2).

Knowingly and with intent to defraud making away with a document which it was his duty to preserve,
in that he, at , on [or about] , with intent
to defraud, burned the pay sheet of A Company, Battalion,
Regiment, for the month of , 18 .

No. 63.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 27 (1).

Making a false accusation against a soldier knowing it to be false,
in that he, at , on , when appearing before
Captain , Battalion, Regiment, to answer
for a minor offence, used language to the effect following, that is to say: "The colour-sergeant is not fair in taking men for duty, and no one in the company can get on if he does not give him a bribe," meaning thereby the colour-sergeant of his company,
Battalion, Regiment, and knowing the said statement to be false.

No. 64.

CHARGE-SHEET.

The prisoner, No. , Private , Dragoons, Regiment, a soldier of the Regular Forces, is charged with—

Falsely stating to his commanding officer that he had been guilty of desertion,
in that he, at , on , stated to
his commanding officer, that he was a deserter from
well knowing such statement to be false.

No. 65.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with— Sec. 29.

Wilfully giving false evidence before a court-martial,
in that he, at , on , when examined as a
witness before a court-martial, stated on oath, that Private
Battalion, Regiment, the prisoner before the
said court, was in his, the witness's, company in his barrack room,
at , between 4 and 5 p.m. on , well
knowing such statement to be false.

No. 66.

CHARGE-SHEET.

The prisoner, No. , Troop Serjeant-Major , Battalion, Regiment, is charged with— Sec. 30 (3).
(M.L.)

Regiment, a soldier of the Regular Forces, is charged with—

Failing to comply with the provisions of the Army Act, 1881, with respect to the payment of the just demands of a person on whom soldiers and horses under his command had been billeted, in that he, at , on , having himself with his horse, and three troopers Regiment, with their horses, been billeted on Mr. , a keeper of a victualling house, failed to pay the said Mr. , the sum of , due to him for the said billets.

No. 67.

CHARGE-SHEET.

Sec. 32.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
After having been discharged with disgrace from a part [parts] of Her Majesty's Forces, enlisting in the Regular Forces without declaring the circumstances of his discharge [discharges], in that he, at , on , after having been discharged with ignominy from , [as incorrigible and worthless from , and on conviction of felony from], enlisted in Her Majesty's Regular Forces for general service [or, for service in the Regiment], without declaring the circumstances of his discharge [discharges].

No. 68.

CHARGE-SHEET.

Sec. 33.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
Making a wilfully false answer to a question set forth in the attestation paper which was put to him by or by direction of the justice before whom he appeared for the purpose of being attested, in that he, at , on , when he appeared before A.B., a Justice of the Peace, for the purpose of being attested—to the question put to him, Have you ever served in the Army? answered, "No"; whereas, he had served, as he well knew, in the Regiment.

No. 69.

CHARGE-SHEET.

Sec. 38 (2).

The prisoner, No. , Gunner , Brigade, Division, Royal Artillery, a soldier of the Regular Forces, is charged with—
Attempting to commit suicide, in that he, at , on , with intent to commit suicide, cut his throat with a razor.

No. 70.

CHARGE-SHEET.

Sec. 40.

The prisoner, No. , Private , Battalion, Regiment, a soldier of the Regular Forces, is charged with—
An act to the prejudice of good order and military discipline, in that he, at , on , when sentry over provost prisoners while employed on fatigue duty in the barrack yard, surreptitiously gave to No. , Private , Battalion, Regiment, one of the said prisoners, a pipe and some tobacco.

No. 71.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 40.
 Regiment, a soldier of the Regular Forces, is charged with—
Conduct to the prejudice of good order and military discipline,
 in that he, at , on , on returning as a
 prisoner to the guard-room on remand, said, "What the
 do I care for Captain [being the prisoner's command-
 ing officer]. He may go to for me," or words to that
 effect.

No. 72.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 40.
 Regiment, a soldier of the Regular Forces, is charged with—
An act to the prejudice of good order and military discipline,
 in that he, at , on , made use of, or [was
 in possession of], a document purporting to be a genuine pass [to
 be signed by], well knowing that it was not
 genuine [so signed].

No. 73.

CHARGE-SHEET.

The prisoner, No. , Corporal , Battalion, Sec. 40.
 Regiment, a soldier of the Regular Forces, is charged with—
Neglect to the prejudice of good order and military discipline,
 in that he, at , on , after being duly warned
 by Colour-Serjeant to parade the regimental defaulters
 at 3 p.m. on that day, neglected to do so.

Note.—This form of charge is applicable when wilful disobedience is
 not imputed.

No. 74.

CHARGE-SHEET.

The prisoner, No. , Serjeant , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
Neglect to the prejudice of good order and military discipline,
 in that he, at , between and , when in charge
 of the recreation room, negligently conducted the supply
 of refreshments authorised to be issued therein, and through
 such negligence caused a loss to that institution of
 [or thereabout].

No. 75.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
When on active service committing the offence of murder,
 in that he, at Ismailia, on [or about] , when on active
 service, did feloniously, wilfully, and of malice aforethought kill
 and murder one Humantoo, a native of the East Indies, a camp
 follower.

No. 76.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion, Sec. 41.
 Regiment, a soldier of the Regular Forces, is charged with—
 (M.L.) 3 A 2

Committing a civil offence, that is to say, burglary,
 in that he, at , on , at about midnight,
 forced open the back door of the dwelling house of
 at , with intent to commit a felony [and feloniously
 took therefrom two silver candle-sticks value or
 thereabout.]

No. 77.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, robbery with violence,
 in that he, at , on , feloniously assaulted
 , and took from his person a silver watch and
 chain, value [or thereabout].

No. 78.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
 First: *Committing a civil offence, that is to say, theft,*
 in that he, at , on , [under pretence of
 making a purchase] stole from the shop of , a
 tobacconist, half a pound of tobacco or thereabout, value
 belonging to the said
 Secondly: *Committing a civil offence, that is to say, receiving
 stolen goods knowing them to have been stolen,*
 in that he, at , on , was in possession of
 half a pound of tobacco or thereabout, value , the
 property of the said , which he knew to have been
 stolen.

No. 79.

CHARGE-SHEET.

Sec. 41. The prisoner, No. , Serjeant , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
Committing a civil offence, that is to say, forgery,
 in that he, at , on [or about] , with intent
 to defraud, forged the name of Captain to a post office
 order for four pounds two shillings and sixpence [and thereby
 obtained the sum of four pounds two shillings and sixpence].

No. 80.

CHARGE-SHEET.

The prisoner, No. , Private , Battalion,
 Regiment, a soldier of the Regular Forces, is charged with—
*Committing a civil offence, that is to say, uttering counterfeit
 coin,*
 in that he, at , on , in a public-house
 known as the Royal Arms, uttered a counterfeit half-crown, know-
 ing the same to be counterfeit.

Note.—The offender utters counterfeit coin if he endeavours to pass it
 in payment of goods, &c., though it be not accepted, or if he tries
 simply to get it changed into other money.

SECOND APPENDIX.

App. II.

FORMS AS TO COURTS-MARTIAL.

FORMS FOR ASSEMBLY OF COURTS-MARTIAL.

No. 1.—General.

Form of Order for the Assembly of a General Court-Martial.

orders by _____ commanding the
(Place, date.)

The detail of officers as mentioned below will assemble
at _____ on the _____ day of _____ for the purpose of
trying by a general court martial the prisoners [prisoner]
named in the margin [and such other prisoner or prisoners
as may be brought before them].*

PRESIDENT.

_____ is appointed president.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

Note.—
These mem-
bers and the
waiting
members
may be
mentioned
by name, or
the number
and ranks
and the
mode of
appoint-
ment may
alone be
named.

_____ has been [or where the convening
officer has the appointment of a judge-advocate is hereby]
appointed judge-advocate.

Prisoners [the prisoner] will be warned and all witnesses
duly required to attend.

The proceedings will be forwarded to

Signed this _____ day of _____

By Order,
A.B.

App. II. * *Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus:*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

† *Add here, if the president is under the rank of field officer, and the officer convening the Court is not under that rank, "In the opinion of the convening officer a field officer is not, having due regard to the public service, available."*

No. 2.—District.

Form of Order for the Assembly of a District Court-Martial.

orders by commanding
(Place, date.)

The detail of officers as mentioned below will assemble at on for the purpose of trying by district court-martial the prisoners [prisoner] named in the margin [and such other prisoner or prisoners as may be brought before them].†

PRESIDENT.

is appointed president.§

MEMBERS.

Prisoners will be warned and all witnesses duly required, to attend.

Note.—
These members and the number and ranks and the mode of appointment may alone be named.

The proceedings will be forwarded to
Signed this day of

By Order,
A.B.

† *Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here, thus:*

"In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available," or as the case may be.

§ If the President is under the rank of field officer, and the convening officer is not under that rank, after the words "appointed president," add "In the opinion of the convening officer a field officer is not, having due regard to the public service, available," and if the president is under the rank of captain, add "In the opinion of the convening officer a captain is not, having due regard to the public service, available." App. II.

If a judge-advocate is appointed, his appointment will be notified or made in the same manner as in the Form of Order for the assembly of a general court-martial.

No. 3.—Regimental.

Form of Order for the Assembly of a Regimental Court-Martial.

orders by commanding
(Place, date.)

The officers mentioned below will assemble at on for the purpose of trying by regimental court-martial the prisoners [prisoner] named in the margin [and such other prisoner or prisoners as may be brought before them.]

PRESIDENT.

is appointed president. ¶

MEMBERS.

Prisoners will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to
Signed this day of

By Order,
A.B.

¶ If the president is under the rank of captain, after the words "appointed president," add "the court-martial being held on the line of march," or "the court-martial being held on board the , a ship* commissioned by Her Majesty," or "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

* If the ship is not Her Majesty's ship insert "not."

App. II.

No. 4.—Field General.

[See below, *Form of Proceedings*, p. 747.]

No. 5.—Declaration for Suspension of Rules.

Form of Declaration of Military Exigencies or the Necessities of Discipline under Rule of Procedure 103.

* [or the necessities of discipline.]
 † [or inexpedient.]
 ‡ State the rule or rules of which cannot be observed. (See Rule 103.)

In my opinion [*military exigencies, namely (*state them*)]
 render it [†impossible] to observe the provisions of rules‡
 on the trial of _____ by _____
 court-martial assembled pursuant to the order of the _____ of _____

Signed at _____ this _____ day of _____

A.B.

[Instruction.—*This declaration must be signed by the officer whose opinion is given, and will be annexed to the proceedings.*]

FORM OF PROCEEDINGS OF COURTS-MARTIAL.

Form of Proceedings of a General Court-Martial (including some of the more unusual incidents which may occur to vary the ordinary course of procedure, with Instructions for the guidance of the Court).

PROCEEDINGS OF A GENERAL COURT-MARTIAL, held at _____
 on the _____ day of _____
 18 _____, by order of _____ Commanding
 18 _____, dated the _____ day of _____

PRESIDENT.

Rank.

Name.

Regiment.

| MEMBERS. | | | App. II. |
|----------|-------|-----------|----------|
| Rank. | Name. | Regiment. | |
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |

_____, Judge-Advocate.

At _____ o'clock the Court opens.
Trial of*

* Here insert No., Rank, Name and Regiment, and appointment (if any).

N.B.—The proper Army Forms, to be obtained from General Officers Commanding, will be used in accordance with the instructions.

The same Form will be used for district courts-martial, and will apply as nearly as may be, with the substitution of "district" for "general," and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.

For regimental courts-martial an Army Form will be used similar to the Form for a general court-martial, with the substitution of "regimental" for "general," and with the omission of all reference to the Judge-Advocate.

(1.) The order convening the Court is read, and [a copy thereof] is marked _____, signed by the president, and attached to the proceedings.

The charge-sheet and the summary [or abstract] of evidence are laid before the Court.

[Instruction.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military necessities, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received should be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.]

The Court satisfy themselves as provided by Rules of Procedure 22 and 23.

(2.)† appears as prosecutor, and takes his place.

† Here state Rank, and Name, and Regiment (if any).

The above-named prisoner is brought before the Court.

VARIATION.

appears as counsel for the prosecutor.

appears to assist [or as counsel for] the prisoner.

The names of the president and members of the Court are read over in the hearing of the prisoner, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

No.

Question by the President to the prisoner.

[Instruction.—The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.]

Answer by prisoner.

VARIATIONS.

Answer.—I object to

Question to the Prisoner.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

[If the president is objected to, that objection will be dealt with first, otherwise, an objection to the junior officer will be disposed of first.]

Objection to the President.

Question to prisoner.—What is your objection to me as president?

Answer by prisoner.—

The prisoner, in support of his objection to the president,
requests permission to call &c., &c.

is called into court, and is questioned

by the prisoner.

The court is closed to consider the objection.

Decision.—The court disallow the objection.

The court is re-opened, and the above decision is made known to the prisoner

02

Decision.—The court allow the objection.

The court is re-opened, and the above decision is made known to the prisoner, and the court adjourns.

Objection to Member.

Question to the Prisoner.—What is your objection to (the junior officer objected to)?

Prisoner.—

The prisoner in support of his objection to requests permission to call _____, re-
_____, &c., &c.

is called into Court, and is questioned by

the prisoner.

The Court is closed to consider the objection.

Decision.—The Court disallow the objection.

The Court is re-opened and the above decision is made known to the prisoner. Or,

Decision.—The Court allow the

The Court is re-opened and the above

known to the prisoner.
retires.

—*

Fresh Member.—* takes his place as a member of the Court.

He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.

Question to Prisoner.—Do you object to be tried by
(the fresh member)?

Prisoner.—

(If he objects, the objection will be dealt with in the same manner as the former objection.)

Question to the Prisoner.—What is your objection to (the junior of the officers objected to)? App. II.

(This objection will be dealt with in the same manner as the former objection.)

The Court adjourn for the purpose of fresh members being appointed.

The Court are of opinion that, in the interests of justice and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because [here state the reasons].

At o'clock on the Court resume their proceedings and an Order appointing another president [or, fresh officers] is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such president [or fresh officers] as provided by Rule of Procedure 22. [Instruction.—The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, will be the same as above.]

The president and members of the Court as constituted after the above proceedings are as follows:—

| PRESIDENT. | | |
|------------|-------|-----------|
| Rank. | Name. | Regiment. |
| _____ | _____ | _____ |
| MEMBERS. | | |
| Rank. | Name. | Regiment. |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

The President, Members, and Judge-Advocate are duly sworn (also any officer under instruction).

[Instruction.—1. The witnesses if in Court should be ordered out of the Court at this stage of the proceedings.

2. Also any interpreter and short-hand writer should be now sworn.]

Do you object to _____ as interpreter? Question to prisoner.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

Do you object to _____ as short-hand writer? Q.

A.

[Instruction.—In case of objection the same procedure will be followed as in the case of an objection to a member of the Court.]

App. II.

CHARGE-SHEET.

Charge-sheet.

- (3.) The charge-sheet is signed by the president, marked and annexed to the proceedings.

VARIATION.

If the prisoner has elected to be tried instead of being dealt with summarily by his commanding officer.

The prosecutor informs the Court that the prisoner has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The prisoner is arraigned upon each charge in the above mentioned charge-sheet.

Question to the prisoner.

Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Answer.

[Instruction.—Where there is more than one charge the foregoing question will be asked after each charge is read, the number of the charge being stated.]

VARIATIONS.

Question to the prisoner.

The prisoner objects to the charge.
What is your objection?

A.

Decision.]

The Court is closed to consider their decision.
The Court disallow the objection [or, the Court allow the objection, and agree to report to the convening officer].
The Court is re-opened, and the above decision is read to the prisoner.
The Court proceed to the trial [or adjourn].
The prisoner pleads to the general jurisdiction of the Court.
What are the grounds of your plea?

I'lla to jurisdiction.
Question to the prisoner.

A.

Q.

Do you wish to produce any evidence in support of your plea?

A.

Witnesses.

Witness is examined on oath.
[Instruction.—The examination, &c., of the witnesses called by the prisoner and of any witnesses called by the prosecutor in reply will proceed as directed below in paragraph (5). The prosecutor will be entitled to reply after all the evidence is given].

Decision.

The Court is closed to consider their decision.
The Court allow [or overrule] the plea, [or resolve to refer the point to the convening authority, or decide specially that].

The Court is re-opened, and the above decision is read to the prisoner. App. II.
The Court proceed to the trial [or adjourn].

VARIATION.

Prisoner, besides the plea of guilty [or, not guilty], offers a plea in bar of trial. *Plea in bar of trial.*
What are the grounds of your plea? *Question the prisoner.*

Do you wish to produce any evidence in support of your plea? *A.*

Witness examined on oath. *A.*
[Instruction.—*The examination, &c., of the witnesses called by the prisoner, and of any witness called by the prosecutor in reply, will proceed as directed below in paragraph (5). The prosecutor will be entitled to reply after all the evidence is given.* *Witnesses.*

The court is closed to consider their decision.
The court allow the plea and resolve to adjourn [or to proceed to the trial on another charge] [or the court overrule the plea]. *Decision.*

The court is re-opened, and the above decision is read to the prisoner.

The Court adjourn [or proceed with the trial on another charge] [or proceed with the trial].

As the prisoner does not plead intelligibly [or refuses to plead to the above charge, or does not plead guilty to the above charge] the Court enter a plea of "Not guilty." *Refusal to plead.*

As the prisoner does not plead "Guilty" to all the charges, the Court proceed with the trial as if he had not pleaded "Guilty" to any charge. *Not pleading guilty to all the charges.*

PROCEEDINGS ON PLEA OF GUILTY.

(4.) The prisoner [number, rank, name, regiment] pleads guilty and is accordingly found guilty of the charge [all the charges] or found guilty of the charge, and is found not guilty of the charge.

[Instruction.—*If the trial proceeds upon any charges to which there is a plea of not guilty, the Court will not proceed upon the record of the plea of guilty until after the finding on those other charges; in that case the charge on which the record is guilty must be read to the prisoner again before the following question is asked.*]

Do you wish to make any statement in reference to this charge to which you have pleaded guilty? (a) *Question to the prisoner.*

(a) It is desirable to state in the proceedings that Rule 85 (B) has been complied with.

App. II. The prisoner in reference to the charge says :—

A. [Instruction.—*The substance of the prisoner's statement must be taken down, and should be taken down in the first person, as nearly as possible in his own words.*]

The summary of evidence [or abstract of evidence] is read, marked , signed by the President, and attached to the proceedings.

[Instruction.—*If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence and to enable the confirming officer to know all the circumstances connected with the case will be taken as in paragraph 5. No address will be allowed.*]

VARIATION.

The Court being satisfied from the statement of the prisoner [or the summary of evidence, or as the case may be], that he did not understand the effect of the plea of "guilty," alters the record, and enters a plea of "not guilty."

[Instruction.—*The Court will then proceed in respect of this charge as in paragraph 5.*]

Evidence as to mitigation of punishment.

Do you wish to make any statement in mitigation of punishment?

No. or

Question to the prisoner.
A.

The prisoner in mitigation of punishment says [or if the statement is in writing, hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

[Instruction.—*If the prisoner's statement is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*]

If the statement is not in writing and not delivered by the prisoner himself the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATION.

The Court give permission to the prisoner to call witnesses to prove his above statement that [here specify the statement which is to be proved.]

[Instruction.—(1.) *The examination, &c., of witnesses called in pursuance of this permission will proceed in the same manner as witnesses to character called under paragraph 6.*

(2.) *The procedure as to sentence, recommendation to mercy, and confirmation will be as in paragraphs 10 and 12.*]

Do you wish to call any witnesses as to character ?

Yes. [No.]

[Instruction.—(1) *The examination, &c., of witnesses as to character will proceed as in paragraph 6.*

(2) *Evidence as to character and particulars of service will be taken as in paragraph 10.]*

App. II.

Evidence as to character. Question to the prisoner. A.

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5.) [If the prosecutor makes an address.] The prosecutor makes the following address, [or, if the address is written, hands in a written address, which is read, marked signed by the President, and attached to the proceedings.]

[Instruction.—Where the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.]

The prosecutor proceeds to call witnesses.

(*) being duly sworn is examined by the prosecutor,

Cross-examined by the Prisoner.

Re-examined by the Prosecutor.

Examined by the Court.

First witness for prosecution. *Here insert his number, rank, name, and regiment, and appointment (if any), or other description.

His evidence is read to the witness (a).

The witness withdraws.

VARIATIONS.

The prisoner declines to cross-examine this witness.

[Instruction.—In every case where the prisoner does not cross-examine a witness for the prosecution this statement is to be made, in order that it may appear on the face of the proceedings that he has had the opportunity given him of cross-examination.

(a) Note.—It is desirable to state in the proceedings that Rule 82 (B) has been complied with.

App. II.

The Court, at the request of the prisoner, allows the cross-examination of the witness to be postponed.
 The prisoner [or the prosecutor] objects to the following question :

The Court is closed to consider their decision.
 The Court overrule [or allow] the objection, and the Court is re-opened and the decision announced.
 The witness, on his evidence being read to him, makes the following explanation or alteration :—

Examined by the prosecutor as to the above explanation or alteration.

Examined by the prisoner as to the above explanation or alteration.

The prosecutor and prisoner decline to examine him respecting the above explanation or alteration.

Second witness for prosecution.

duly sworn, is examined by the prosecutor.
(The examination, &c., of this and every other witness proceeds as in the case of the first witness.)

VARIATION.

The Court think it expedient to continue to sit after six o'clock in the afternoon, on the ground that [state the grounds].

Adjournment.

At o'clock the Court adjourn until o'clock on the

Second day.

On the of 18 , at o'clock, the Court re-assemble, pursuant to adjournment, present the same members as on the of

VARIATIONS.

[Instructions—(1) If a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.

(2) If either the President or the Judge-Advocate is absent, and cannot attend within reasonable time, the Court will adjourn, and the President or senior member present will thereupon report the case to the convening authority. (See Rule of Procedure 66).]

(Rank—Name—Regiment) being absent.

(The absence is accounted for.)

A medical certificate [or letter, or as the case may be] is produced, read, marked , and attached to the proceedings. App. II.
Absent member.

The Court adjourn until .
or,

There being present (not less than the legal minimum) members, the trial is proceeded with.

An order bearing date , appointing (the senior member) president of the Court-martial in the place of who is read, marked , signed by the President, and attached to the proceedings. New President.

The trial is proceeded with.

An order, bearing date , appointing to act as Judge-Advocate in the place of , who is read, marked , signed by the President, and attached to the proceedings, and the new Judge-Advocate duly sworn. New Judge Advocate.

The trial is proceeded with.

[Instructions.—(1) If the Court, in consequence of the adjournment having been prolonged by the senior officer on the spot, or otherwise, do not meet on the day to which they previously adjourned, or if the adjournment was until further orders, the words "pursuant to adjournment" will be omitted from the above Form, and the cause of their meeting at the above time will be entered in the proceedings.]

(2) If the place of meeting has been altered by orders, or otherwise, the place of meeting and the reason for meeting at that place will be entered in the proceedings.]

Examination [cross-examination] of continued.

The prosecution is closed.

DEFENCE.

Do you intend to call any witnesses in your defence ?

Yes. [No].

Is he a witness as to character only ?

Question to prisoner.
A.
Q.
A.

VARIATION.

[If the prisoner is defended by counsel or by an officer having the rights of counsel.]

Do you wish to make any statement in addition to the address made by your counsel [or]?

(6.) [Instruction.—If the prisoner calls no witnesses, or witnesses as to character only, adopt this and omit (7).]

If a prisoner is defended by counsel or an officer having (M.L.)

App. II. *the rights of counsel, and does not wish to make a statement in addition to the address by such counsel or officer, adopt this and omit (7).]*

The prosecutor addresses the Court upon the evidence for the prosecution as follows [*or, if the address is written, hands in a written address, which is read, marked* , signed by the President, and attached to the proceedings.]

[*Instruction.—Where the address of the prosecutor is not in writing the Court should record so much as appears to them material and so much as the prosecutor requires to be recorded.*]

Question to prisoner.

Have you anything to say in your defence ?

VARIATION.

The Court, at the request of the prisoner, adjourn until to enable him to prepare his defence.

The prisoner in his defence says [*or hands in a written address, which is read, marked* , signed by the President, and attached to the proceedings].

VARIATION.

[*Instruction.—If the prisoner is defended by counsel or by an officer having the rights of counsel.*]

Do you wish to make any statement in addition to the address made by your counsel [*or*]

[*Instruction.—If a prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.

In either case any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

First witness as to character.

The prisoner calls the following witnesses as to character:

* is duly sworn.

Examined by the Prisoner.

Here insert his number, rank, name, and regiment, and appointment (if any), or other description.

Cross-examined by the Prosecutor.

Re-examined by the Prisoner.

App. II.

Examined by the Court.

His evidence is read to the witness (a).

The witness withdraws.

VARIATION.

The prosecutor declines to cross-examine this witness.

The witness, on his evidence being read to him, makes the following explanation or alteration.

Examined by the prisoner as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prisoner and prosecutor decline to examine him respecting the above explanation or alteration.

(7.) [Instruction.—If the prisoner calls witnesses who are not as to character only, or if a prisoner defended by counsel, or by an officer having the rights of counsel, wishes to make a statement in addition to the address by such counsel or officer, omit *Par. (6)* and adopt (7).]

Have you anything to say in your defence ?

Question to prisoner.

VARIATION.

The Court, at the request of the prisoner, adjourn until to enable him to prepare his defence.

The prisoner in his defence says [or if his address is in writing, hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].

(a) Note.—It is desirable to state in the proceedings that Rule 82 (B) has been complied with.

(M.L.)

App. II. [Instructions.—(1) *If a prisoner's defence is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.*

(2) *If the address is not in writing and not delivered by the prisoner himself, the material portions should be recorded.*

(3) *In either case, any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]*

The prisoner calls the following witnesses :

* Here insert *
his number,
rank, name,
and regi-
ment, and
appoint-
ment, if any,
or other
description.

is duly sworn

Examined by the Prisoner.

Cross-examined by the Prosecutor.

Re-examined by the Prisoner.

Examined by the Court.

His evidence is read to the witness (a).

The witness withdraws.

VARIATIONS.

The prosecutor declines to cross-examine this witness.

(a) *Note.*—It is desirable to state in the proceedings that Rule 82 (B) has been complied with.

The witness, on his evidence being read to him, makes the following explanation or alteration. App. II.

Examined by the prisoner as to the above explanation or alteration.

Examined by the prosecutor as to the above explanation or alteration.

The prisoner and prosecutor decline to examine him respecting such explanation or alteration.

[Where the prisoner is defended by counsel or an officer having the rights of counsel.] The prisoner makes the following statement in addition to his address by his counsel [or].

The prosecutor [by leave of the Court] calls witnesses in reply.

The prisoner makes the following address [or, if the address is in writing, hands in a written address, which is read, marked , signed by the President, and attached to the proceedings].

The prosecutor makes the following reply [or, if the reply is in writing, hands in a written reply, which is read, marked , signed by the President, and attached to the proceedings];

or,

• The prosecutor declines to make a reply.

[Instruction.—Where the reply of the prosecutor is not in writing, the Court should record so much as appears to them material, and so much as the prosecutor requires to be recorded.

If the prisoner's address is not in writing and is delivered by himself, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If the address is not in writing and not delivered by the prisoner himself the material portions should be recorded.

In either case, any matter which is requested by or on behalf of the prisoner to be recorded should be recorded, and care must be taken whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment].

The Judge-Advocate makes the following summing up [or, if the summing up is in writing, hands in a written summing up, which is read, marked , signed by the President, and attached to the proceedings].

App. II.

VARIATIONS.

The Court, at the request of the prisoner, adjourn until
to enable him to prepare his address.
The Court at the request of the prosecutor, adjourn until
to enable the prosecutor to prepare his reply.
The Judge-Advocate and the Court think a summing up unnecessary.

or,
The Court, at the request of the Judge-Advocate, adjourn
until to enable him to prepare
his summing up.

FINDING.

Finding. (8.) The court is closed to consider their finding.
The Court find that the prisoner (*No.—Rank—Name—Regiment*) is not guilty of the
Not Guilty. charge [and honourably acquit him of the same], but is
guilty of the ;

or,
Guilty. is guilty of the charge [all the charges] ;
or,
is guilty of the charge, and guilty of the
Special findings. charge with the exception of the words [*or with the exception that*]

or,
is not guilty of desertion, but is guilty of absence without
leave ;

[*Instruction.—Any special finding allowed by Section 56 of the Army Act may be expressed in this form.*]

or,
find that the prisoner did [*Here set out such particulars in any charge as the Court find to be proved*], but the Court doubt whether such facts constitute in law the offence stated in the charge, or in the charge, or in the charge, and therefore they find him guilty of the offence in such one of those charges as the facts in law constitute ;

or,
adjourn for the purpose of consulting the convening
[*or, as the case may be, confirming*] officer ;

On re-assembly on the day of , and on
reading the opinion of which is marked
and annexed to the proceedings, find that the prisoner, &c.

PROCEEDINGS ON ACQUITTAL OF ALL THE CHARGES.

(9.) The Court find that the prisoner (*No.—Rank—Name—Battalion—Regiment*) is not guilty of the charge
[*or all the charges*] ;

or,

is not guilty of the charge [or all the charges] and honour- **App. II.**
ably acquit him of the same.

The findings are read in open Court, and the prisoner is *Acquittal.*
released.

Signed at _____, this _____ day of _____ 18 ____ .
(Judge-Advocate.) (President.)

VARIATION.

The Court find that the prisoner [No.—Rank—Name— *Insanity.*
Battalion—Regiment] is, by reason of insanity, unfit to take his
trial;

or,
is guilty of the _____ charge or _____ charges,
but was insane at the time of the commission of the
offences specified in those charges.

Signed at _____, this _____ day of _____ .
(Judge-Advocate.) (Signature) (President.)

Confirmed,
At _____ this _____ day of _____
(Signature of Confirming Authority.)

PROCEEDINGS ON CONVICTION.

Before Sentence.

(10.) The Court being re-opened the prisoner is again *Evidence of*
brought before it. *character,*

(Number—Rank—Name—Regiment) is duly sworn. *&c.*

Have you any evidence to produce as to the character *Question by*
and particulars of service of the prisoner? *the Presi-*
dent.

I produce this statement.

The witness hands in the statement, which should be in *Answer by*
the following form : *the witness.*

STATEMENT as to CHARACTER and PARTICULARS of SERVICE of PRISONER.

Number — Rank — Name — Regiment [or as the case
may be].

(1) The following is a fair and true summary of the
entries of the prisoner's name in the company [or troop]
defaulters' book, exclusive of convictions by a court-
martial or a civil court :—

| | Within last 12 months. | Since Enlistment. |
|------------|---------------------------|----------------------|
| For _____, | _____ times | _____ times. |
| For _____, | _____ times | _____ times. |
| | or, | |

App. II. The prisoner's name does not appear in the defaulters' book.

[Instruction.—*If the charge is for drunkenness, the entries for drunkenness must be stated separately.*]

(2.) The prisoner has not been previously convicted.

or,

The previous convictions of the prisoner by a court-martial or a civil court are set out in the Schedule annexed to this statement.

(3) The prisoner is not under sentence at the present time.

or,

The prisoner at the present time is under sentence for beginning on the day of

(4) The prisoner has been in confinement, awaiting trial on the present charges for (a) , beginning on the day of

(5) The prisoner's present age according to his attestation paper is

(6) The date of his attestation specified in his attestation paper is

(7) The service which the prisoner is allowed to reckon towards discharge or transfer to the reserve is

(8) The prisoner is entitled to deferred pay in respect of service.

(9) The prisoner is entitled to reckon service for the purpose of determining his pension, &c.

[Instruction.—*If the Court is a general or district court-martial there should be added to the above the following*]:—

(10) The prisoner is in possession of or entitled to no military decoration or military reward which the Court can forfeit [or is in possession of or entitled to (state any military decoration or reward which the Court can forfeit.)]

(11) (If the prisoner is a warrant officer not holding an honorary commission.) The prisoner before he was made a warrant officer last held the regimental rank of

(12) (In the case of an officer or a warrant officer holding an honorary commission.) The prisoner holds in the army the [honorary] rank of dated , and in his regiment [or corps or department] the rank of dated

[Instruction.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*]

SCHEDULE.

Of convictions by a court-martial or civil court of

(a) The blank should be filled up with the number of days.

prisoner, No. , Rank , Name , of App. II
regiment [or as the case may be].

[Instruction.—A verbatim extract from the regimental books stating these convictions must be inserted.]

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental books in my custody.

Signed this day of

A.B.

The above statement [with the schedule of convictions] is read, is marked , signed by the President and annexed to the proceedings.

Is the prisoner the person named in the statement which you have heard read ? *Question by the President.*

Answer by the witness

Have you compared the contents of the above statement Q with the regimental books ?

A.

Are they true extracts from the regimental books, and Q is the statement of entries in the defaulters' book a fair and true summary of those entries ?

A.

Cross-examined by the Prisoner.

Re-examined.

Or, the prisoner declines to cross-examine this witness.

[Instruction.—Any further question will be put and any evidence produced which the Court require as to any point respecting the character and service of the prisoner on which the Court desire to have information for the purpose of their sentence.

At the request of the prisoner, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The prisoner is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.]

The Court is closed to consider their sentence.

service [and army service], or as the case may be. App. II.

- (g) to be reprimanded [or severely reprimanded]. *Reprimand,*
- (h) to forfeit the [state the medal, clasp, or severe reprimand, and decoration, or any of them, which is to be forfeited] with any annuity or gratuity attached thereto.
- (i) to be put under stoppages of pay until he has made good the sum of , or as the case may be.

In the case of a soldier :—

- (j) to suffer death by being shot [hanged]. *Death.*
- (k) to suffer penal servitude for the term of years [or for life]. *Penal servitude*
- (l) to be imprisoned (a) [with hard labour] for years. *Impt. H. L.*
- (m) to suffer summary punishment, that is to say, for field imprisonment No. 1, for days. *Field imprisonment No. 1.*
- (n) to suffer summary punishment, that is to say, field imprisonment No. 2, for days. *Field imprisonment No. 2.*

[Instruction.—(1) *If a prisoner at the time of sentence is undergoing imprisonment under a former sentence, the new sentence must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence to imprisonment or penal servitude, although these sentences necessarily involve a reduction to the ranks.]*

- (o) to be discharged with ignominy from Her Majesty's service. *Discharge with ignominy.*
- (p) [if a volunteer] to be dismissed from Her Majesty's service. *Dismissed.*
- (q) [if a non-commissioned officer (b)].

- (1) To be reduced to the rank of serjeant ; or *Reduction.*
- (2) To be reduced to the rank of corporal ; or
- (3) To be reduced to the rank of bombardier ; or To be reduced to the rank of second corporal ; or
- (4) To be reduced to [a lower grade] or to be reduced to the ranks.

- (r) to be fined. *Fined l. s. d.*
- (s) to be put under stoppages of pay until he has made good the value of the following articles, viz. :— *Stoppages.*

(a) As to form of sentence and reference to calendar months, see Q.R., Sect. VI, para. 108. See s. 44 (10).

(b) A sentence of reduction from or to an acting rank is void ; e.g., a sentence on a corporal to be reduced to the rank of lance-corporal is void. See s. 183 (3), note.

App. II.

Forfeitures.

or [and] until he shall have made good the sum of
, in respect of [state the cir-
cumstances in respect of which the same is awarded.]

(t) to forfeit [state number of or all] good-
conduct badge [or badges] with the pay
attached thereto.

to forfeit deferred pay in respect of [all
or calendar months or years] previous service.

to forfeit [all or years, or
calendar months] past service for the purpose of
determining pension.

to forfeit the [state medal, clasp, and decora-
tion, or any of them, which is to be forfeited] with any
annuity or gratuity attached thereto (a).

[Instruction.—(1) *An offender may be sentenced to all or
any of the above forfeitures.*

(2) *In the case of a warrant officer, a district court-
martial must use one of the following forms; a general
court-martial may use them in lieu of, or in addition to, the
foregoing forms, see s. 182 (2).*

(u) To be dismissed from the service.

or,
(v) To be suspended from rank, pay, and allowances
for the period of

or,
(w) To be reduced in the list of his rank as if his
appointment thereto bore date the
day of

or,
To be reduced to an inferior class of warrant
officer; that is to say, to

or,
(x) [*If he was originally enlisted as a soldier, but
not otherwise*]

To be reduced to [a lower grade] or to be re-
duced to the ranks.

RECOMMENDATION TO MERCY.

The Court recommend the prisoner to mercy on the
ground that

The Court recommend that of the service
forfeited under section 79 of the Army Act shall be
restored on the ground that

(a) Under the Royal Warrant a soldier convicted of desertion,
fraudulent enlistment, or an offence under s. 17 or 18 of the Army Act,
and a soldier sentenced to penal servitude or to be discharged with
ignominy, forfeits all medals and decorations (other than the Victoria
Cross) without any award by the court-martial. In such cases therefore
an award should not be made.

SIGNATURE.

App. II.

Signed at _____, this _____ day of _____ 18 .
 (Signature) (Signature)
 Judge-Advocate. President.

REVISION.

(11.) At _____, on the _____ day of _____, *Revision.*
 at _____ o'clock, the Court re-assemble by order of _____
 for the purpose of re-considering their _____
 Present, the same members as on the _____.

VARIATION.

[Instructions.—If a member is absent and the absence will reduce the Court below the required minimum, or he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or in his absence, the senior member present shall thereupon report the case to the convening officer.]

[Rank, name, regiment] being absent.

[The absence is accounted for.]

A medical certificate [or letter, or as the case may be] *Absent member.*
 is produced, read, marked _____, and
 attached to the proceedings.

There being present [not less than
 the required minimum] members the Court proceeds.

The letter [order or memorandum] directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the [finding] [finding and sentence] [or sentence] is read, marked _____, signed *Revised finding.*
 by the President, and attached to the proceedings.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings.

a. do now revoke their finding and sentence, and find
 and sentence the prisoner to,

or
 b. do now revoke their sentence, and now sentence the *Sentence.*
 prisoner, &c., &c.,

or,
 c. do now respectfully adhere to their sentence or [finding
 and sentence].

Signed at _____, this _____ day of _____ 18 .
 Judge-Advocate. President.

CONFIRMATION.

(12.) Confirmed,

Confirmation.

or,
 I vary the sentence so that it shall be as follows _____,
 and confirm the finding and the sentence as so varied,

or,
 I confirm the finding and sentence of the Court, but
 [mitigate, remit, or, commute] _____].
 or,

App. II. [Where it is necessary to confirm the special finding on several alternative charges,]

I confirm the finding on _____ and charges, and I confirm the special finding relating to the _____ and _____ charges, and declare that that finding amounts to a finding of guilty on the _____ charge, and of not guilty on the _____ and _____ charges.

I confirm the sentence [but mitigate, remit, or commute];

or
[Where the confirming officer desires partly to reserve his confirmation,]

I confirm the finding of the Court on the _____ and _____ charges and reserve for confirmation by superior authority the finding on the _____ and _____ charges, and the sentence;

or,
I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority;

or,
I confirm the findings of the Court and the sentence of the Court as to _____, and reserve the sentence so far as it _____ for confirmation by superior authority.

Signed at _____, this _____ day of _____ 18 .

(Signature of Confirming Authority.)

[Instruction.—Any remarks of the confirming authority are to be added separately after the confirmation, and a space of at least half a page is to be left for the purpose.]

[Where the declaration respecting a special finding on alternative charges is added subsequently to the confirmation (Rule 55),]

I declare that the special finding relating to the _____ and _____ charges amounts to a finding of guilty on the _____ charge, and of not guilty on the _____ and _____ charges.

Signed at _____, this _____ day of _____ 18 .

(Signature of Authority.)

FORM OF SUMMONS.

Form of Summons to a Civil Witness.

To

Whereas a _____ court-martial has been ordered to assemble at _____ on the _____ day of _____ 18 , for the trial of _____, of the _____ regiment
I do hereby summon and require you A. _____ B

to attend, as a witness, the sitting of the App. II.
 said Court at on the day of
 at o'clock in the forenoon [and to bring with you
 the documents hereinafter mentioned, namely,],
 and so to attend from day to day until you shall be duly
 discharged, whereof you shall fail at your peril.

Given under my hand at on the day of
 18

(Signature)

Convening Officer [or Judge-Advocate
 or President of the Court or Com-
 manding Officer of the Prisoner].

FORM FOR ASSEMBLY AND PROCEEDINGS OF FIELD GENERAL COURT-MARTIAL (a).

PROCEEDINGS.

*At , this day of 18 .

*State the
 place and
 country.
 A. Order
 convening
 the court.

Beginning of Form where Troops are not on Active Service.

Whereas complaint has been made to me, the under-
 signed, an officer in command of , in the
 above-named country, that the persons named in the
 annexed schedule, being subject to military law, and
 under my command, have committed the offences in the
 said schedule mentioned, being offences against the pro-
 perty or person of inhabitants of or residents in the above-
 mentioned country.

Beginning of Form where Troops are on Active Service.

Whereas it appears to me, the undersigned, an officer
 in command of on active service, that
 the persons named in the annexed schedule, and being
 subject to military law, have committed the offences in
 the said schedule mentioned.

End of Form applicable to all cases.

And I am of opinion that it is not practicable that
 such offences should be tried by an ordinary general court-
 martial;

[+ and that it is not practicable to delay the trial for
 reference to a superior qualified officer].

†Omit
 except
 where con-
 vening
 officer is
 not a com-

App. II. I hereby convene a field general court-martial to try |
the said persons, and to consist of

manding
officer and
is below
rank of
field officer,

PRESIDENT.

| <i>Rank.</i> | <i>Name.</i> | <i>Regiment.</i> |
|--------------|--------------|------------------|
| _____ | _____ | _____ |

MEMBERS.

| <i>Rank.</i> | <i>Name.</i> | <i>Regiment.</i> |
|--------------|--------------|------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

†Omit ex-
cept where
the court-
martial
consists of
two officers
only.

B. Certifi-
cate of
president
as to pro-
ceedings.

[†I am of opinion that three officers are not available
having due regard to the public service.]

(Signed)

I certify that the above Court assembled on the
day of _____ and duly tried the persons named in
the said schedule, and that the plea, finding, and sentence
in the case of each such person were as stated in the third
and fourth columns of that schedule.

Signed this _____ day of _____, 18 . D—

President of the Court-martial.

C. Confir-
mation.

I have dealt with the findings and sentences in the
manner stated in the last column of the above schedule,
and, subject to what I have there stated, I hereby confirm
the above findings and sentences ; and I am of opinion,
with reference to the sentences of summary punishment
mentioned in the schedule, that imprisonment cannot, with
due regard to the public service, be carried into execution,
[*and I am of opinion that it is not practicable, having
due regard to the public service, to delay the cases for
confirmation by any superior qualified authority].

Signed this _____ day of _____, 18 . E— F—

*Omit ex-
cepting
where under
rules it is
ordinarily
the duty of
the confirm-
ing officer
to reserve
the case.

Field [or General] Officer in the force
[or commanding].

I have dealt with the reserved findings and sentences in the manner stated in the last column of the schedule, and, subject to what I have there stated, I hereby confirm the said reserved findings and sentences.

Signed this day of , 18 .
G_____ H_____

General [Field] Officer in the force.

Subject to what I have stated in the last column of the schedule, I hereby confirm the [finding and] sentence of death in the case of _____ and of penal servitude in the case of _____ [and in the case of the above sentences of death I am of opinion that by reason of _____ it is not practicable, having due regard to the public service, to delay the case for confirmation by any qualified officer superior to myself].

E. Confirmation of sentence of death or penal servitude.
 †Omit where confirmed by officer in chief

Signed this day of , 18 .
J— K—

General [Field] Officer in chief command of the forces.

App. II.

SCHEDULE.

Date 18 . No.

*If the name of the person charged is unknown, he may be described as unknown, with such addition as will identify him.
 †Recommendation to mercy to be inserted in this column.

| Name of alleged Offender.* | Offence charged. | Plea. | Finding, and if convicted, sentence.† | How dealt with by confirming officer. |
|--|---|--------------------|--|---|
| Peter Smith (sutler) | Offence against person of inhabitant of country | Guilty | Guilty. Field imprisonment No. 1 for . | Confirmed. I remit B—F— |
| 262, Private James Robinson, 1st Batt. —shire Regiment | Breaking into house in search of plunder | Not guilty | Guilty. Two month's imprisonment | Not confirmed. B—F— |
| 564, Private Thomas Jones, 1st Batt. —shire Regiment | Drunk on post | Not guilty | Guilty. Death. Recommended to mercy. | Reserved [or Confirmed], but commuted to field imprisonment No. 1 for B—F— Confirmed, but commuted to years' penal servitude. J—K— |
| Person accompanying force (name unknown), white jacket and trousers, scar on right cheek | Impeding provost-marshal | Not guilty | Not guilty | |
| Soldier in uniform of —shire Regiment (name unknown) | Offence against property of inhabitant of country | Not guilty | Guilty. Field imprisonment No. 2 for . | Reserved. B—F— Confirmed. G—H— |
| P—Q— Convening Officer. | | C—D— President. | | |

THIRD APPENDIX.

FORMS OF COMMITMENT.

FORM A.

Form of Order for commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.

App. III.

Whereas [Name—No.—Rank], of the _____ regi-
ment, was by general court-martial held at _____,
convicted of the offence of _____ (a), and, by a
sentence signed on the _____ day of _____ 18____, sentenced
(b) to suffer penal servitude, for _____ years, commencing
on the aforesaid day, and such sentence has been confirmed
by _____, as required by law.*

Now therefore, I, the undersigned, the (c) _____ do
hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that
the said convict shall be, as soon as practicable, trans-
ferred to a prison in which a prisoner sentenced to penal
servitude by a civil court in the United Kingdom can for
the time being be confined either permanently or tempo-
rarily, there to undergo his sentence according to law.

*Add, if
necessary,
"with a
remission of
years."

And I do hereby in pursuance of the above-mentioned
Acts and powers order the governor or chief officer of any
such prison to whom the convict is brought to receive him
into his custody and detain him accordingly, and for so
doing this shall be sufficient warrant.

Signed this _____ day of _____ 18____.

C.D.

(a) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death but has been commuted to penal servitude, substitute "to suffer death and such sentence was confirmed by _____, as required by law, and was commuted to _____ years' penal servitude, commencing on the aforesaid day."

(c) "Commanding officer of the said convict," or "commander-in-chief," or "adjutant-general," or "officer commanding the military district where the said convict is," (as the case may be, or, where the convict is in Ireland, "the general commanding the forces in Ireland.")

(M.L.)

3 c 2

App. III.

FORM B.

Form of Order for commitment to Prison of Military Convict sentenced in India, or a Colony, or a Foreign Country, to Penal Servitude.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a general court-martial held at _____, convicted of the offence of _____ (a), and by a sentence signed on the _____ day of _____ 18 _____, sentenced (b) to suffer penal servitude for _____ years, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law.*

*Add, if necessary, "with a remission of _____ years."

Now, therefore, I, the undersigned, the (c) _____ do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict shall be, as soon as practicable, transferred to a prison in the United Kingdom in which a prisoner sentenced to penal servitude by a civil court in the United Kingdom can for the time being be confined, either permanently or temporarily, there to undergo his sentence according to law.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the convict is brought to receive him into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

And for the above purpose, I, the undersigned, do hereby further, in pursuance of the above-mentioned Acts and powers, order that the said convict be removed in military custody by [*here state route*], or such other route as may be directed by proper authority, to the port at _____ or such other port as may be directed by proper

(a) If there are several offences state all of them. An offence should be stated in the words of the charge on which the convict was convicted, but if modified by the finding, as so modified; omitting the statement of particulars giving the details of time, place, and circumstances.

(b) Where the sentence was death but has been commuted to penal servitude, substitute "to suffer death and such sentence was confirmed by _____, as required by law, and was commuted to _____ years' penal servitude, commencing on the aforesaid day."

(c) "Commander-in-chief of the forces in India* [or the presidency in India], "adjutant-general in India [or the presidency in India], "officer commanding the forces in the colony of _____, or "officer commanding the military district [or station] where the said convict is," as the case may be, or, if the convict was sentenced in a foreign country, "officer commanding the army [or force] with which the said convict was serving at the time of his being sentenced," or "officer commanding the military district [or station] where the said convict is," or if he has been brought into India or a colony, any of the officers before in his note mentioned.

* The presidency commands-in-chief were abolished in 1893, and the references to them in this Appendix will therefore be disregarded.

authority, thence to be removed by [here state route] to such prison as aforesaid in the United Kingdom.

App. III.

And I do hereby, in pursuance of the above-mentioned Acts and powers, order the officer or non-commissioned officer in charge of any provost prison, and also the governor or chief officer of any other prison, military or civil, to whom the convict is brought, to receive the said convict, and detain him so long as appears reasonably necessary with the view to his said removal, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed this day of 18 . C.D.

In case an Alteration of the Route above-mentioned becomes necessary. (a)

Whereas for the purpose of better carrying into effect the above order for the removal of the above-mentioned convict to the United Kingdom, it is necessary to alter the route above-mentioned, I, the undersigned, the (b), do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said convict be removed in military custody by [here state the route so far as varied] to , thence to be removed as directed by the said order.

Signed at this day of 18 . E.F.

In case of need the following Order may be made.

For the purpose of carrying into effect the above order, I, the undersigned, the officer commanding the military (c) district where the above convict is, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of prison at , to receive the above-named convict, and to detain him until he can be removed to and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 18 . G.H.

(a) This order can be repeated by any removing authority as often as necessary.

(b) "Officer commanding the military district [or station] where the above convict is," or "commander-in-chief of the forces in India [or the presidency in India]," or "adjutant-general in India [or the presidency in India]," or "officer commanding the forces in the colony of " as the case may be.

(c) If necessary substitute "station" for district. This order may also be made by any of the officers mentioned in the last note.

App. III.

FORM C.

Form of Order for Commitment to Prison, Military or Civil, of Military Prisoners sentenced either in or out of the United Kingdom to Imprisonment.

To the governor or chief officer in charge of (a) prison at

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a (b) _____ court-martial held at _____ convicted of the offence of _____, (c), and by a sentence signed on the day of _____ 18 _____, sentenced (d) to be imprisoned with *hard labour for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law (e),

*If the sentence does not specify hard labour alter "with" into "without."

Now, therefore, I, the undersigned, the (f)

do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said military prisoner into your custody and detain him to undergo his said sentence according to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 _____.

C.D.

(a) Insert "Her Majesty's" or as required according to title of prison.

(b) Insert as required "general," "district," "regimental."

(c) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(d) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment for _____ with _____"

*If the commutation does not specify hard labour alter "with" into "without."

hard labour, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment for _____ with _____ * hard labour, commencing on the aforesaid day."

(e) Add, if necessary, "with a remission of _____" or "but has been mitigated by the omission of the hard labour," or as the case may be.

If the imprisonment was awarded by the commanding officer, the form from "Whereas" down to "required by law" will be replaced by the corresponding provision in Form F.

(f) "Commanding officer of the said prisoner," or "officer who confirmed the sentence," or "officer commanding the military district [or station], where the said prisoner is," also, in the United Kingdom, "commander-in-chief" or "adjutant-general," also, if the prisoner is in Ireland, "general commanding the forces in Ireland," also, in India or a colony, "commander-in-chief of the forces in India [or in the _____ presidency in India]," or "adjutant-general in India [or in the presidency in India]," or "officer commanding the forces in the colony of _____," also if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the said prisoner belonged at the time of his being sentenced."

FORM D.

App. III.

Form of Order respecting Imprisonment under Sentence passed out of the United Kingdom and to be undergone in the United Kingdom.

Whereas [*Name—No.—Rank*], of the _____ regiment, was by a (a) _____ court-martial held at _____ convicted of the offence of _____ (b), and by a sentence signed on the _____ day of _____ 18____, sentenced (c) to be imprisoned with _____ *hard labour for _____, commencing on the aforesaid day, and such sentence has been confirmed by _____, as required by law (d).

*If the sentence does not specify hard labour, alter "with" into "without."

Now, therefore, I, the undersigned, the (e)

being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that the said military prisoner shall be transferred and removed to _____ prison at _____ in the United Kingdom, or such other public prison in the United Kingdom as any other competent authority may appoint in this behalf, there to undergo his sentence according to law.

And I do hereby, in pursuance of the said Acts and powers, order the governor or chief officer of any such prison as aforesaid to whom the above prisoner is brought, to receive the prisoner into his custody and detain him accordingly, and for so doing this shall be sufficient warrant.

(a) Insert "general," or "district," as required.

(b) If there are several offences state all of them. An offence should be stated in the words of the charge on which the prisoner was convicted, but if modified by the finding, as so modified; omitting the statement of particulars containing the details of time, place, and circumstances.

(c) Substitute, where the original sentence was death or penal servitude which has been commuted to imprisonment, "to suffer death, and such sentence has been confirmed by _____ as required by law, but has been commuted into imprisonment for _____, with

† hard labour, commencing on the aforesaid day," or "to suffer _____ years' penal servitude, and such sentence has been confirmed by _____ as required by law, and has been commuted into imprisonment for _____, with † hard labour, commencing on the aforesaid day."

†If the commutation does not specify hard labour, alter "with" into "without."

(d) Add, if necessary, "with a remission of _____," but has been mitigated by the omission of the hard labour, "or as the case may be. If the imprisonment was awarded by the commanding officer, the form from "Whereas" down to "required by law," will be replaced by the corresponding provision in Form F.

(e) "Commander-in-chief of the forces in India [or in the presidency in India]," or "adjutant-general in India [or in the presidency in India]," "officer commanding the forces in the colony of _____," or "officer commanding the military district [or station] where the prisoner is," as the case may be, or, if the sentence was passed in a foreign country, "officer commanding the army [or force] to which the prisoner belonged at the time of his being sentenced," or, if the prisoner is brought into India or a colony, any of the officers before in this note mentioned.

App. III. And I do hereby, in pursuance of the said Acts and powers, further order that the said prisoner shall be conveyed in military custody and detained in military custody or in a prison, military or civil, so far as appears necessary or proper for effecting his removal to the said prison in the United Kingdom.

Signed at this day of 18 . C.D.

In case of a Committal to any intermediate Prison being necessary (a).

For the purpose of carrying into effect the above Order, I, the undersigned, the (b) do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order the governor or chief officer of the

prison at , to receive the said military prisoner, and detain him until he can be removed, in pursuance of the above order, and to deliver him when required for the purpose of such removal, and for so doing this shall be sufficient warrant.

Signed at this day of 18 . E.F.

Order on arrival of Prisoner in United Kingdom.

I, the undersigned, commanding the military district where the above-named military prisoner is, being the committing and removing authority, do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order him to be transferred and removed to the prison at , to undergo his sentence according to law.

And I do hereby order the governor or chief officer of that prison to receive him, and for so doing this shall be sufficient warrant.

Signed at this day of 18 . G.H.

FORM E.

Form of Commitment to Provost Prison on Conviction by Court-Martial.

To the officer or non-commissioned officer in charge of the provost prison at

(a) This order may be repeated by any authority having power to make it as often as necessary.

(b) "Officer commanding the military district [or station] in which the above-named prisoner is," or any of the officers named in note (c) previous page, or "officer who confirmed the sentence on the above-named prisoner," or "commanding officer of the above-named prisoner."

Whereas [*Name—No.—Rank*], of the _____ regi- App. III.
ment, was by a _____ (a) court-martial held at _____
convicted of the offence of _____ (b), and by a
sentence signed on the _____ day of _____ 18 _____, sen-
tenced to be imprisoned with _____ *hard labour *If the
for (c) _____, commencing on the said day, and sentence
such sentence has been confirmed by _____ does not
as required by law. (d) _____ specify hard
labour, alter
"with" into
"without."

Now, therefore, I, the undersigned, being the command-
ing officer of the said military prisoner (e) do hereby in
pursuance of the Army Act, and all other Acts and
powers enabling me in this behalf, order you to receive
him into your custody to undergo his sentence according
to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 _____
C.D.

FORM F.

*Form of Commitment to Provost Prison on award of
Imprisonment by Commanding Officer.*

To the officer or non-commissioned officer in charge of
the provost prison at _____

Whereas [*Name—No.—Rank*], of the _____ regiment,
was on the _____ day of _____ 18 _____, awarded by
his commanding officer imprisonment with
*hard labour for _____ for the offence of _____

Now, therefore, I, the undersigned, being the command-
ing officer of the said military prisoner, do hereby in
pursuance of the Army Act, and of all other Acts and
powers enabling me in this behalf, order you to receive
him into your custody to undergo his sentence according
to law, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 _____
C.D.

(a) Insert "general," "district," "regimental," as required.

(b) If there are several offences state all of them. An offence should
be stated in the words of the charge on which the convict was convicted,
but if modified by the finding, as so modified; omitting the statement
of particulars containing details of time, place, and circumstances.

(c) Substitute, where the original sentence was death or penal servitude
which has been commuted into imprisonment, "to suffer death, and such
sentence has been confirmed by _____ as required by law; but has
been commuted into imprisonment for _____ with _____ † hard
labour commencing on the aforesaid day," or "to suffer _____ years' †If the com-
penal servitude," and such sentence has been confirmed by _____ mutation
does not
specify hard
labour, alter
"with" into
"without,"

† hard labour for _____ commencing on the aforesaid day."
(d) Add, if necessary, "with a remission of _____" or "but has
been mitigated by the omission of the hard labour," or as the case may be.

(e) Substitute, if necessary, any officer authorised to sign Form C.

App. III.

FORM G.

Order for Discharge of Prisoner.

To the governor or chief officer of _____ prison
at _____

Whereas [*Name—No.—Rank*], of the _____ regiment,
is now in your custody under a sentence of imprisonment
by court-martial.

I, the undersigned, being (a) _____ do
hereby order you to discharge the said prisoner.

Signed at _____ this _____ day of _____ 18 _____
E.F.

FORM H.

Form of Discharging Order in case of Imprisonment in Provost Prison under the Award of Commanding Officer.

To the officer or non-commissioned officer in charge of
the provost prison at _____

You are hereby required to discharge the prisoner
[*Name—No.—Rank*], _____ of _____ regiment,
now in your custody undergoing his sentence pursuant to
the award of his commanding officer.

Signed at _____ this _____ day of _____ 18 _____
C.D.

Commanding Officer of the above Prisoner.

FORM I.

Order for Removal of Prisoner to be brought before a Court.

To the governor or chief officer of _____ prison
at _____

(a) *If the order is made in the United Kingdom*, "the officer commanding the military district in which the said military prisoner is" or "the commander-in-chief," or "the adjutant-general," or "the officer who confirmed the sentence on the prisoner acting in consequence of a case of necessity without the order of superior authority."

If the order is made in India, "the officer commanding the military district [or station] to which the prisoner is," "the commander-in-chief of the forces in India [or in the _____ presidency in India]," or "adjutant-general in India [or in the _____ presidency in India]," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

If the order is made in a colony, "the officer commanding the forces in the colony of _____," or the officer commanding the military district [or station] in which the prisoner is," or "the officer who confirmed the sentence on the prisoner, acting in consequence of a case of necessity without the order of superior authority."

If the prisoner is imprisoned under the award of his commanding officer, the commanding officer may sign this order, making the necessary alterations.

Whereas [*Name—No.—Rank*], of the _____ regiment, App. III. is now in your custody undergoing a sentence of imprisonment (*a*) passed by court-martial.

I, the undersigned, being (*b*) the officer commanding the military district* in which the said prisoner is, do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer bringing this order. *If necessary substitute "station."

And I do hereby order the said officer or non-commissioned officer, and all other officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody and bring him to _____, there to appear before a (*c*) court-martial (*d*) as a witness, and then to return him to the above-named prison, or to such other prison as may be determined by the proper authority, and to detain him in military custody until he is so returned or is discharged in due course of law, and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____, 18 ____ .
J.K.

If the Prison to which he is returned is altered.

I, the undersigned, being the officer commanding the military district in which the above-named military prisoner is, (*e*) do hereby in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order that he be forthwith returned in military custody to _____ prison at _____, there to undergo the remainder of his sentence.

Signed at _____ this _____ day of _____, 18 ____ .
L.M.

(a) If necessary substitute "awarded by his commanding officer."

(b) Substitute, if necessary, or if in the United Kingdom, "the commander-in-chief" or "the adjutant-general," or if the prisoner is in Ireland, "the general commanding the forces in Ireland," or if the sentence was passed by the commanding officer, "the commanding officer," or if in India, "the commander-in-chief of the forces in India [or in the presidency in India]," "the adjutant-general in India [or in the presidency in India]," or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner," or if in a colony, "the officer commanding the forces in the colony of _____," or "the officer who confirmed the said sentence," or "the commanding officer of the said military prisoner."

(c) If the facts so require, substitute "civil court."

(d) Substitute, according to the facts, "for trial," or the other reasons for which he is to be brought.

(e) Same as note (b) in Form I.

RULES OF PROCEDURE.

App. III

FORM J.

Order for Removal of Prisoner for Embarkation.

To the governor or chief officer of _____ prison
at _____

Whereas [*Name—No.—Rank*], of the _____ regiment is now in your custody undergoing a sentence of imprisonment passed by court-martial (a).

If necessary
may
substitute
"station."

I, the undersigned, being the officer commanding the military district* in which the said prisoner is (b), do hereby, in pursuance of the Army Act, and of all other Acts and powers enabling me in this behalf, order you to deliver the said military prisoner to the officer or non-commissioned officer presenting this order.

And I do hereby order the said officer or non-commissioned officer, and all officers and non-commissioned officers into whose custody the said prisoner may be delivered, to keep the said prisoner in military custody and to convey him in military custody in such manner as may be directed by military authority, to _____, where the _____ regiment to which he belongs is serving (c), and for so doing this shall be sufficient warrant.

Signed at _____ this _____ day of _____ 18 _____.

J.K.

FORM K.

Order for Removal of Prisoner from one public Prison to another.

To the governor or chief officer of _____ prison,
at _____

Whereas [*Name—No.—Rank*], of the _____ regiment, is now in your custody undergoing a sentence of imprisonment passed by court-martial.

(a) If necessary substitute "awarded by his commanding officer."

(b) Substitute if necessary, if in the United Kingdom, "commander-in-chief" or "adjutant-general," or if the prisoner is in Ireland "general commanding the forces in Ireland," or if a sentence was passed by the commanding officer, "commanding officer of the said prisoner acting in pursuance of directions from the officer commanding the military district where the said prisoner is," or from one of the above-mentioned officers.

If in India, "commander-in-chief of the forces in India [or in the presidency in India]," or "adjutant-general in India [or in the presidency in India]," or "officer who confirmed the said sentence" [or "commanding officer of the said military prisoner"], acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is, or from one of the Indian officers above-mentioned.

If in a colony, "officer commanding the forces in the colony of _____," or "officer who confirmed the said sentence" [or commanding officer of the said military prisoner], acting in pursuance of directions from the officer commanding the military district [or station] where the prisoner is [or from the officer commanding the forces in the colony of _____].

(c) If necessary substitute "under orders to serve."

I, the undersigned, being the (a) do hereby, App. III.
in pursuance of the Army Act, and of all other Acts and
powers enabling me in this behalf, order you to deliver
the said military prisoner to the officer or non-commis-
sioned officer presenting this order.

And I do hereby order the said officer or non-commis-
sioned officer, and all officers and non-commis-
sioned officers into whose custody the said prisoner may be delivered to
keep the said prisoner in military custody and convey
him in military custody in such manner as may be directed
by military authority, to the
prison at , there to undergo the remainder of his
sentence, and for so doing this shall be sufficient warrant.

Signed at this day of 18 .

J.K.

FORM L (b).

Form of order for temporary detention in Prison or Lock-up.

To the governor or chief officer of prison at
(c).

Whereas [Name—No.—Rank], of the regiment is
now a prisoner in military custody.

Now therefore I, the undersigned, the commanding
officer of the said prisoner do hereby in pursuance of the
Army Act, and of all other Acts and powers enabling me
in this behalf, order you to receive the said prisoner into
your custody and detain him until you receive a further
order from me, but not longer than seven days, and for
so doing this shall be your warrant

Signed this day of 18 .

J.K.

Further Forms.

*The following forms will be found useful. They are not
part of the Appendix to the Rules of Procedure :—*

(a) "Commanding officer of the said prisoner," or "officer who con-
firmed the said sentence," or "officer commanding the military district
[or station] where the said prisoner is," also if in the United Kingdom,
"commander-in-chief" or "adjutant-general," or, if the prisoner is in
Ireland, "general commanding the forces in Ireland," also, if in India
or a colony, "commander-in-chief of the forces in India [or in the
presidency in India]," or "adjutant-general in India [or in the
presidency in India]," or "officer commanding the forces
in the colony of , also, if in a foreign country, "officer
commanding the army [or force] to which the said prisoner belonged at
the time of his being sentenced."

(b) This form can be used only in the case of a soldier as defined by
the Army Act.

(c) Substitute if necessary "officer in charge of the police station [or
other place] at ."

FORM No. 1.

Form of Commitment of Person guilty of Contempt of a Court-Martial under s. 28.

To the officer or non-commissioned officer in charge of the provost prison at

Whereas, a court-martial for the trial of _____, of which I, the undersigned, am president, was on this day sitting at

and the _____ Battalion, Regiment, was guilty of contempt of such court by using insulting language [or by using threatening language], [or by causing an interruption in the proceedings of such court, or as the case may be], namely by [here describe the act of which the prisoner was guilty].

Now therefore the said court doth order that such offender be committed to prison with [or without] hard labour for _____ days.

And the court doth order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

Signed at _____ this _____ day of _____ 18 ____.

(Signature)

A.B., President of the above Court-Martial.

FORM No. 2.

Form of Commitment to Provost Prison for safe custody while awaiting Trial by, or Sentence of, Court-Martial.

To the officer or non-commissioned officer in charge of the provost prison at _____

Whereas _____, of the

_____ regiment [has been remanded for trial by court-martial] or [was on the _____ day of _____ 18 ____] tried by court-martial for the offence of _____,

and is awaiting [trial] (a) or [the promulgation of the finding and sentence of the court] (a).

Now, therefore, I, the undersigned, being the commanding officer of the said soldier, do hereby, in pursuance of the Queen's Regulations and Orders for the Army enabling me in this behalf, order you to receive him into your custody for safe custody, and for so doing this shall be your warrant.

(a) NOTE.—The forms should be altered to meet the cases of detention before and after the trial respectively by erasing the words not applicable.

[illegible]

possession at the period of his commitment.

I certify that I have examined
of the Battalion Regiment
and find him free from disease.
Station.

Date 18 _____ Signature of Medical Officer.

Signed at _____ this _____ day of _____ 18 ____ .

(Signature)

Commanding Officer of the above Prisoner.

Rules for Summary Punishment.

S.P. Rules. RULES FOR SUMMARY PUNISHMENT MADE UNDER THE
ARMY DISCIPLINE AND REGULATION (ANNUAL) ACT,
1881.

(1) Where a court-martial can sentence an offender to summary punishment, the court may sentence him for a period not exceeding three months to one of the following summary punishments, namely :—

- (a) Field imprisonment No. 1 ; or
- (b) Field imprisonment No. 2.

(2) Where an offender is sentenced to field imprisonment No. 1, he may, during the continuance of his sentence, be punished as follows :—

- (a) He may be kept in irons, *i.e.*, in fetters or handcuffs, or both fetters and handcuffs ; and may be secured so as to prevent his escape ;
- (b) When in irons he may be attached for a period or periods not exceeding two hours in any one day to a fixed object in such manner that he must remain in a fixed position, but he must not be so attached during more than three out of any four consecutive days, nor during more than twenty-one days in all ;
- (c) Straps or ropes may be used for the purpose of these rules in lieu of irons ;
- (d) He may be subjected to the like labour, employment, and restraint, and dealt with in like manner as if he were under a sentence of imprisonment with hard labour.

(3) Where an offender is sentenced to field imprisonment No. 2, the foregoing rule with respect to field imprisonment No. 1 shall apply to him, except that he shall not be liable to be attached in a fixed position as provided by paragraph (b) of Rule 2.

(4) Every portion of a summary punishment shall be inflicted in such a manner as is calculated not to cause injury or to leave any permanent mark on the offender ; and a portion of a summary punishment must be discontinued upon a report by a responsible medical officer that the continuance of that portion would be prejudicial to the offender's health.

(Signed) HUGH C. E. CHILDERS.

30th July, 1881.

The foregoing rules are to be observed by the Royal S.P. Rules.
 Marine Forces when subject to the Army Act, 1881, until
 further rules are made in pursuance of section 44 of the
 said Act.

(Signed)

NORTHBROOK.

A. COOPER-KEY.

Admiralty,

26th November, 1881.

Forms of Court-Martial Warrants.

Warrants. The following Forms are at present in use :—

- I.—*Form of Warrant under the Sign-Manual empowering General Officers in command at home to convene General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any persons subject to Military Law as may for the time being be under or within the territorial limits of your command who shall be charged with any offence against Military Discipline, whether such offence shall have been committed before or after you shall have taken upon yourself your command. The said courts-martial shall be constituted, and shall proceed in the trial of the offenders, and in giving sentence and awarding punishment, according to the powers and directions contained in the said Act.

We are further pleased to order that the proceedings of every such court-martial shall be transmitted to Our Judge-Advocate-General, in order that he may lay the same before Us for Our consideration, and afterwards send them to Our Field-Marshal Commanding-in-Chief, or, in his absence, to the Adjutant-General of Our forces, for Our decision thereupon.

And for so doing, this shall be, to you, and all others whom it may concern, a sufficient warrant and authority.

Given at Our Court at this

day of 18
in the Year of Our Reign.

By Her Majesty's Command.

(Signature of Secretary of State.)

To

The General

or officer Commanding the Forces [of
at Home].

District

- II.—*Form of Warrant under the Sign-Manual enabling Commander-in-Chief in India to convene and confirm the findings and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for

the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command, who shall be charged with any offence against the provisions of the said Act; and We hereby further authorise you to confirm the proceedings of any courts-martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act. Warrants.

And We do hereby further authorise you to direct your warrant to any officer under your command, not under the rank of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such officer shall have taken upon him his command, and also to exercise in respect of the proceedings of such courts-martial the power of confirming the findings or sentences thereof in accordance with the said Act; or if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such courts-martial, in which case you are hereby authorised to exercise in respect of the proceedings so reserved all the powers of a confirming officer in accordance with the said Act.

We also hereby authorise you in any case in which you shall think fit so to do, to transmit the proceedings of any General Court-Martial to our Judge-Advocate-General, in order that he may lay the same before us, and afterwards send them to our Field-Marshal Commanding-in-Chief, or, in his absence, to the Adjutant-General of Our Forces for Our decision thereupon.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any officer duly authorised to convene a General Court-Martial, the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of every such Court-Martial, We do also give you authority to appoint and to delegate to any officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all

(M.L.)

3 p 3

Warrants. others whom it may concern, a sufficient warrant and authority.

Given at Our Court at _____ this
day of _____ 18

in the _____ Year of our Reign.

By Her Majesty's Command.

²⁵ By _____
(Signature of Secretary of State.)

To

*The General or Officer for the time being
Commanding in Chief*

The Forces in the East Indies.

NOTE.—The warrant for the Commander-in-Chief on active service often follows the above Form.

III.—*Form of Warrant under the Sign-Manual enabling the Lieutenant-Generals commanding the Forces in Bengal ; Punjaub ; Madras ; and Bombay ; to convene and confirm the findings and sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the command ; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command ; and also to exercise in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in

respect of the proceedings so reserved, all the powers of a Warrants. confirming officer in accordance with the said Act.

Provided always, that if by the sentence of any Court-Martial any Commissioned Officer, either of Our Army or of Our Indian Forces, has been sentenced to suffer Death, Penal Servitude, or to be cashiered or dismissed from Our Service, you shall in such cases, as in any other in which you shall think fit so to do, refer the proceedings to the General Commanding-in-Chief Our Forces in the East Indies, for him to act in respect thereof as he shall think right.

And that there may not in any case be a failure of justice from the want of a proper person authorised to act as Judge-Advocate, We do hereby further empower you, in default of a person appointed by Us, or deputed by the Judge-Advocate-General of Our Forces, or during the illness or occasional absence of the person so appointed or deputed, to nominate and appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial the power of appointing a fit person from time to time for executing the office of Judge-Advocate at any Court-Martial for the more orderly proceedings of the same.

And for enforcing the sentence of any such Court-Martial, We do also give you authority to appoint and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things therein expressed, these shall be to you, and all others whom it may concern, a sufficient warrant and authority.

Given at Our Court at this

day of 18
in the Year of Our Reign.

By Her Majesty's Command.

(Signature of Secretary of State.)

To

*The General or Officer for the time being
Commanding the Forces*

IV.—*Form of Warrant under the Sign-Manual enabling General Officer Commanding the Forces in a Colony to convene and confirm the finding and Sentences of General Courts-Martial.*

(Sign-Manual.)

In pursuance of the provisions of the Army Act.

We do hereby authorise you, from time to time, as occasion may require, to convene General Courts-Martial

Warrants. — for the trial of any person subject to Military Law as may for the time being be under or within the territorial limits of your command who shall be charged with any offence against the said Act, whether such offence shall have been committed before or after you shall have taken upon yourself the command; and We hereby further authorise you to confirm the proceedings of any such Courts-Martial, and to cause any sentence thereof to be put in execution, according to the provisions of the said Act.

And We do hereby further authorise you to direct your Warrant to any Officer under your command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial, under the said Act, of any such persons subject to Military Law as are for the time being under or within the territorial limits of his command, whether the offences shall have been committed before or after such Officer shall have taken upon him his command, and also to exercise, in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act; or, if you should so think fit, of directing him to reserve for your confirmation the proceedings of all or any such Courts-Martial, in which case you are hereby authorised to exercise, in respect of the proceedings so reserved, all the powers of a confirming Officer in accordance with the said Act.

Provided always, that if by the sentence of any General Court-Martial a Commissioned Officer, other than a native Commissioned Officer, has been sentenced to suffer Death, or Penal Servitude, or to be cashiered or dismissed from Our Service, you shall in such case, as also in the case of any other General Court-Martial in which you shall think fit so to do, transmit the proceedings to Our Judge-Advocate General, in order that he may lay the same before Us, and afterwards send them to Our Commander-in-Chief, or, in his absence, to the Adjutant-General of Our Forces, for Our decision thereupon.

Provided also that if by the sentence of any General Court-Martial a native Commissioned Officer has been sentenced to suffer Death or Penal Servitude, or to be cashiered or dismissed from Our Service, you shall in such case require the proceedings to be reserved for your confirmation, or, if you shall so think fit, for transmission to Our Judge-Advocate-General, in order that he may lay the same before Us, and afterwards send them to Our Commander-in-Chief, or, in his absence, to the Adjutant-General of Our Forces, for Our decision thereupon.

. And that there may not in any case be a failure of justice from the want of a proper person authorised to act as

Judge-Advocate, We do hereby further empower you, in Warrants.
default of a person appointed by Us, or deputed by the —
Judge-Advocate-General of Our Forces, or during the
illness or occasional absence of the person so appointed or
deputed, to nominate and appoint, and to delegate to any
Officer duly authorised to convene a General Court-
Martial, the power of appointing a fit person from time
to time for executing the office of Judge-Advocate of any
Court-Martial for the more orderly proceedings of the
same.

And for enforcing the sentence of any such Court-Martial, We do also give you authority to appoint, and to delegate to any Officer duly authorised to convene a General Court-Martial, the power of appointing a Provost-Marshal to use and exercise that office according to the provisions of the said Act.

And for executing the several powers, matters, and things herein expressed, these shall be to you, and all others whom it may concern, a sufficient warrant and authority.

Given at Our Court at this

day of 18
in the Year of Our Reign.

By Her Majesty's Command.

(Signature of Secretary of State.)

To

*The General or Officer for the time being
Commanding the Forces at*

V.—*Form of Warrant by Officer holding one of foregoing Warrants delegating to an Officer power to convene General Courts-Martial.*

Army Form A. 1.

 T_0

Whereas I am empowered by Warrant of Her Majesty to direct my warrant to any Officer under my command, not below the degree of a Field Officer, giving him a general authority to convene General Courts-Martial for the trial under the Army Act, of any person under the command of such last-mentioned officer who is subject to Military Law, and also to execute (subject to the provisions of the said Warrant) in respect of the proceedings of such Courts-Martial, the power of confirming the findings or sentences thereof in accordance with the said Act, or of directing him to reserve for my confirmation the proceedings of all or any such Courts-Martial.

By virtue of the said Warrant, I do hereby authorise and empower you *for the Officer on whom your command

* May be omitted.

VI.—*Form of Warrant by Officer holding one of foregoing Warrants.
Warrants delegating to an Officer power to convene
District Court-Martial.*

Army Form A. 5.

To

Whereas I am empowered by Warrant to convene General Courts-Martial, and whereas under the Army Act, any Officer or person authorised to convene General Courts-Martial may empower any person under his command not below the rank of Captain, to convene a District Court-Martial for the trial under that Act of any person under the command of such last-mentioned Officer who is subject to Military Law.

By virtue of the said Act and Warrant, I do hereby authorise and empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of] from time to time as occasion may require, to convene District Courts-Martial for the trial, in accordance with the said Act and the Rules made thereunder, of any person under your command, who is subject to Military Law and is charged with any offence mentioned in the said Act, and is liable to be tried by a District Court-Martial.

† And I do hereby empower you *[or the Officer on whom your command may devolve during your absence, not under the rank of] to receive the proceedings of such Courts-Martial, and confirm the findings and sentences thereof, and to exercise, as respects these Courts and the persons tried by them, the powers created by the said Act of Parliament in the confirming Officer, in such manner as may be best for the good of Her Majesty's Service.

And for so doing, this shall be, as well to you as to all others whom it may concern, a sufficient warrant.

Given under my hand and seal at

this

day of

Signature of }
General Officer }

By Command.

Signature of }
Staff Officer }

* May be omitted or varied in accordance with the terms of the Army Act, s. 123.

† This clause to be omitted if the power of confirmation is wholly reserved.

Army
Form
B. 116.

Form of Application for a Court-Martial.

Army Form B.116.

Regiment.

Station
Application for a

Date 18
Court-Martial.

SIR,

I have the honour to submit Charge against No.
of the under my command, and
request you will obtain the sanction of
that a Court-Martial may be assembled for
his trial at

The prisoner is now at . His General
Character is *

I beg to enclose the following documents:—

1. † Charge sheet (in duplicate).
2. ‡ Summary of Evidence.
3. § The prisoner's troop [battery or company] defaulter sheet.
4. § List of Witnesses for the prosecution, and defence (with their present stations).
5. § Statement as to character, and particulars of service of prisoner (Army Form B. 296) to be proved by

I have the honour to be,

SIR,

Your most obedient humble Servant,

Signature of
Commanding Officer. }

To

SURGEON'S CERTIFICATE.

I certify that No. Regiment
is in a state of health and to
undergo Imprisonment, and with or without hard labour ;
and that his present appearance and previous medical
history both justify the belief, that hard labour employ-
ment will neither be likely to originate nor to reproduce
disease of any description.

Signature of the Surgeon.

* To be filled in by the Commanding Officer.

† One copy to be sent to the president ; one copy to be filed with the application for trial. In cases of desertion, a statement as to whether the prisoner was apprehended or surrendered, should be included in the summary of evidence.

‡ To be sent to the president.

§ (4) (5) To be returned to the Corps with the notice of trial.

**Order in Council respecting Discipline on
board H.M.'s Ships.**

Order in
Council.

AT THE COURT AT OSBORNE HOUSE, ISLE OF
WIGHT.

The 6th day of February, 1882.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN
COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 3rd of February, 1882, in the words following, viz. :—

“WHEREAS by the 88th section of an Act passed in the 29th and 30th years of Your Majesty's reign, chapter 109, entitled, ‘An Act to make Provision for the Discipline of the Navy,’ it is enacted that Your Majesty's land forces, when embarked on board any of Your Majesty's ships, shall be subject to the provisions of that Act to such extent and under such regulations as Your Majesty by Order in Council shall direct ;

“And whereas under Articles 1172, 1173, and 1174 of the Regulations for the Government of Your Majesty's Naval Service, established under Your Majesty's Order in Council dated the 4th day of February, 1879, certain rules were laid down for the discipline of Your Majesty's land forces when embarked as passengers in any of Your Majesty's ships ;

“And whereas we, having had the said rules under our careful consideration, are humbly of opinion that it would be for the advantage of Your Majesty's Service that the said rules should be amended, we therefore beg leave to recommend that Your Majesty will be graciously pleased by Your Order in Council to direct that the said rules shall be cancelled, and that the following Regulations shall be established in lieu thereof :—

“1. Whenever any of Your Majesty's land forces shall be embarked as passengers in any of Your Majesty's ships, the officers and soldiers shall, from the time of embarkation, strictly observe the laws and regulations established for the government and discipline of Your Majesty's Navy, and shall, for these purposes, be under the command

Order in Council. of the commanding officer of the ship, as well as of the senior naval officer present; and all military officers or other persons under the equivalent rank of Captain of Your Majesty's Navy taking passages, and all military officers in actual command for the time being of any of the troops embarked, through whom orders to the troops (given by the officer of the watch) are required to pass, shall be under the command of the officer of the watch.

"2. Any act against the good order and discipline of the ship shall be deemed an act to the prejudice of good order and military discipline under the 40th section of the Army Act, 1881, unless the breach of discipline constitutes some other military offence for which provision is otherwise made in the said Act.

"3. Whenever an officer or soldier commits any act against the good order and discipline of the ship, the commanding officer of the ship may, by his own authority, and without reference to any other person, cause him to be put under arrest or confined as a close prisoner; and may, if he thinks the case requires it, order the prisoner to be disembarked at the first convenient opportunity, transmitting a report in writing, through the senior naval officer present, to the senior military officer in command of the land forces, in order that the offender may be brought before a military court-martial.

"4. The commanding officer of the ship shall have full power on his own authority, to order an offender, whether officer or soldier, to be placed in either naval or military custody, as he shall consider most desirable, observing that in all cases where an offender is to be disembarked for trial by military authority, he must be placed in military custody on board the ship.

"5. If any officer or soldier commits any act which, in the opinion of the commanding officer of the troops, can only be adequately dealt with by a general or district court-martial, the offender shall, with the concurrence of the commanding officer of the ship, be disembarked on the first opportunity for the purpose of being proceeded against according to military law.

"6. If any private soldier shall commit any act against the good order and discipline of the ship, which in the opinion of the commanding officer of the ship requires the infliction of any summary punishment for which a warrant is required by the Summary Punishment Table attached hereto, and which he is hereby authorised to award, the commanding officer of the ship shall confer with the commanding officer of the troops as to the nature and amount of such punishment, if any, to be inflicted, and on their concurrence the commanding officer of the ship shall,

by warrant under his hand, which should also bear the signature of the officer commanding the troops as concurring, sentence the offender to suffer such punishment accordingly. In the event of the commanding officer of the troops not concurring with the commanding officer of the ship, the commanding officer of the ship is to cause the offender to be placed under arrest or confined as a close prisoner, until the case can be referred to superior military authority.

Order in
Council.
—

“7. If any non-commissioned officer shall commit an offence which, in the opinion of the commanding officer of the ship and the officer commanding the troops, does not require trial by general or district court-martial, the commanding officer of the ship may, by an order in writing, authorise the officer commanding the troops to convene a regimental court-martial for the trial of such non-commissioned officer, and thereupon the trial may proceed, and the finding and sentence may be confirmed in all respects as if the court had been convened and the sentence had been passed in the United Kingdom.

“Provided that no sentence of any such regimental court-martial shall be carried into execution on board any of Your Majesty's ships until the commanding officer of the ship has, by an order in writing, expressed his concurrence in the said sentence, and directed that it may be carried into effect.

“If the commanding officer of the ship shall see fit to withhold the last-named order in writing, the confirming officer shall suspend the execution of the sentence until the disembarkation of the prisoner.

“Whenever such regimental court-martial is held on board, the captain of the ship is to report immediately by special letter on each case to the Admiralty, a copy of which letter shall accompany the quarterly returns of punishment.

“8. The commanding officer of the troops, on his taking command of the troops embarked, will receive from the captain of the ship authority under his hand, and in the established form, to award such summary punishments as are specified in the Summary Punishment Table for the military, but such authority will not deprive the captain of his right to withdraw the original authority given; in the latter case, however, he should report to the Admiralty the circumstances which induced him to deviate from the general rule.

“9. All orders to the troops are, so far as may be practicable, to be given through their own officers and non-commissioned officers, and the commanding officer of the ship is to bear in mind that although the discipline of

Order in all on board is under his entire control, he is nevertheless
 Council. to leave the troops to the management of their own officers,
 — so far as may be consistent with the order and discipline
 of the ship.

“10. In special and exceptional cases, where the commanding officer of the ship may deem it necessary for the good order or discipline of the ship to give such orders as may interfere with existing regulations, or may affect the internal economy and discipline of the troops embarked, he is to make a special report of the circumstances to the Admiralty.

“11. When any soldiers of Your Majesty's land forces are embarked as passengers in any of Your Majesty's ships, and there is no commissioned officer of the land forces on board, the commanding officer of the ship shall possess and may exercise in regard to any such soldiers all the powers conferred upon him by Article 6 in the case of private soldiers without conferring with or obtaining the concurrence or signature of any officer of Your Majesty's land forces.

“12. All summary punishments for soldiers embarked on board Your Majesty's ships shall be in strict accordance with the Summary Punishment Table appended to this Order in Council.

“13. Military convicts and military prisoners when embarked on board Your Majesty's ships for passage shall be kept in military custody.

“Your Majesty's Secretary of State for War and His Royal Highness the Field Marshal Commanding-in-Chief have signified to us their concurrence in these proposals.”

SUMMARY PUNISHMENT TABLE.*
"DESCRIPTION of SUMMARY PUNISHMENTS to be awarded to PRIVATE SOLDIERS when embarked in HER MAJESTY'S SHIPS."

| Number of Troop Punishments. | Authorised Summary Punishments for Private Soldiers. | By whom to be Awarded. | If Warrant required. | Military Equivalent. | Remarks. |
|------------------------------|--|---------------------------------|----------------------|---|--|
| 1. | Imprisonment, with or without hard labour (not to exceed 42 days). | Captain | Yes | Imprisonment with or without Hard Labour. | The offender loses a Badge for any imprisonment. |
| 2. | Confinement in a Cell (not to exceed 14 days)... | Captain | Yes | Day for Day | Ditto ditto |
| 3. | Stoppage in conformity with the Army Act, 1881, s. 138 (3) and (4). | Captain | Yes | Conviction by Court-Martial. | Loss of a Badge. |
| 4. | Stoppage of smoking. Eating meals under sentry's charge. Half an hour to dinner. Not exceeding three hours Pack Drill, if weather permits; if not, to Parade without Packs. To stand for two hours on deck from 6 to 8 p.m. Answer Roll Call every Bell between Morning Parade and 6 p.m.... | { Officer commanding the Troops | No | Confinement to Barracks Day for Day. | If confined for more than 7 days he loses a Badge. |
| 5. | Stoppage of smoking. Answer Roll Call every 7 days | Ditto | No | Company Entry | — |
| 6. | Bell from Morning Parade till 6 p.m. Answer Roll Call four times daily. | Ditto | No | Regimental Entry, if exceeding 7 days; otherwise Company Entry. | If exceeding 7 days entails loss of Badge. |
| 7. | Fines for Drunkenness, as provided for in Queen's Regulations and Orders for the Army. | Ditto | No | Company or Regimental Entry as the case may be. | — |
| 8. | Extra Guards for Slackness, Inattention on Guard, as in Queen's Regulations and Orders for the Army. | Ditto | No | Company Entry. | — |

Note.—A Private Soldier may be admonished, and a Non-Commissioned Officer reprimanded by the Officer Commanding the Troops.
 * This Table is printed with the amendments consequent on the abolition of a liquor ration to soldiers on board ship, made by Order in Council, 30th June, 1890.

Order in Council.

SUMMARY PUNISHMENT TABLE.

Order in Council. "DESCRIPTION of PUNISHMENT to be awarded to Non-COMMISSIONED OFFICERS when embarked in Her MAJESTY'S SHIPS.

| Authorised Punishments for Non-Commissioned Officers. | By whom to be awarded. | Authority required. | Military Effect. | Remarks. |
|---|---------------------------|---|--------------------------------------|---|
| Reduction } Fines and } Stoppages } | Regimental Court-Martial. | Captain's concurrence by order in writing | Regimental Court-Martial Conviction. | Whenever a Regimental Court-Martial is authorised to be held, the Court will sit on some convenient place on the main deck screened off for the purpose, or other convenient place. |

HER MAJESTY, having taken the said memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C. L. PEEL.

PART III.

MISCELLANEOUS ENACTMENTS, REGULA- TIONS AND FORMS.

PART III.

MISCELLANEOUS ENACTMENTS, REGULATIONS AND FORMS.

Extract from the Petition of Right, 3 Chas. I, c. 1 (1627).

“To the Kinge most excellent Majestie.

“Humbly shew unto our soveraigne lord the King the lorde spirituall and temporall and comons in Parliament assembled, that

“Whereas alsoe by authoritie of Parliament in the five and twentieth year of the raigne of Kind Edward the Third it is declared and enacted that no man should be forejudged of life or limbe against the forme of the Great Charter and the lawe of the land, and by the said Great Charter, and other the laws and statutes of this your realme no man ought to be adjudged to death but by the laws established in this your realme, either by the customes of the said realme or by Acts of Parliament. And whereas no offender of what kind soever is exempted from the p'ceedinge to be used and punishmente to be inflicted by the lawes and statutes of this your realme, neverthelesse of late tyme divers comissions under your Majesties greate seale have issued forth, by which certaine p'sons have been assigned and appointed comissioners with power and authoritie to p'ceed within the land according to the justice of martiall lawe against such souldiers or marriners or other dissolute p'sons joyning with them as should comitt any murther robbery felony mutiny or other outrage or misdemeanor whatsoever, and by such sumary course and order as is agreeable to martiall lawe and as is used in armies in tyme of war to p'ceed to the tryall and condemnation of such offenders, and then to cause to be executed and putt to death according to the lawe martiall.

“By p'text whereof some of your Majesties subjecte have been by some of the said comissioners put to death, when and where, if by the lawes and statute of the land they had deserved death, by the same lawes and statute

(M.L.)

3 E 2

alsoe they might and by no other ought to have byn judged and executed.

"And alsoe sundrie greivous offenders by colour thereof clayming an exempcion have escaped the punishmente due to them by the lawes and statutes of this your realme, by reason that divers of your officers and ministers of justice have unjustlie refused or forborne to p'ceed against such offenders according to the same lawes and statutes upon p'tence that the said offenders were punishable onelie by martiall law and by authoritie of such comissions as aforesaid. Which comissions and all other of like nature are wholly and directlie contrary to the said lawes and statutes of this your realme.

"They doe therefore humblie pray your most excellent Majestie that the aforesaid comissions for p'ceeding by martiall lawe may be revoked and annulled. And that hereafter no comissions of like nature may issue forth to any p'son or p'sons whatsoever to be executed as aforesaid, lest by colour of them any of your Majesties subjecte be destroyed or put to death contrary to the lawes and franchise of the land."

The Railway Act, 1842.

[5 & 6 VICT., c. 55.]

Extract from

An Act for the better Regulation of Railways, and for the Conveyance of Troops. [30th July, 1842.]

Railway companies shall convey military and police forces at prices to be settled.

20. And be it enacted that, whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities. (a)

(a) This section is repealed, except as to Ireland, and except as respecting the conveyance of forces by companies, which lose the benefit of the Cheap Trains Act, 1883. (46 & 47 Vict., c. 34.) See s. 6 of this Act below.

The Railway Act, 1844.

[7 & 8 VICT., c. 85.]

Extract from

An Act to attach certain Conditions to the Construction of future Railways authorised or to be authorised by any Act of the present or succeeding Sessions of Parliament; and for other purposes in relation to Railways.

[9th August, 1844.]

12. And whereas by an Act passed in the sixth year of Her Majesty, intituled "An Act for the better regulation of Railways, and for the Conveyance of Troops," it was, among other things, enacted that, whenever it shall be necessary to move any of the officers or soldiers of Her Majesty's forces of the line, ordnance corps, marines, militia, or the police force by any railway, the directors thereof shall and are hereby required to permit such forces respectively, with their baggage, stores, arms, ammunition, and other necessaries and things, to be conveyed at the usual hours of starting, at such prices or upon such conditions as may from time to time be contracted for between the Secretary at War and such railway companies for the conveyance of such forces, on the production of a route or order for their conveyance signed by the proper authorities: And whereas it is expedient to amend such provisions in regard to the prices and conditions of conveyance by any new railway or any railway obtaining new powers from Parliament: Be it enacted, that all railway companies which have been or shall be incorporated by any Act of the present or any future session, or which by any Act of the present or any future session shall have obtained or shall obtain any extension or amendment of the powers conferred by their previous Acts or any of them, or have been or shall be authorised to do any act unauthorised by the provisions of such previous Acts, shall be bound to provide such conveyance as aforesaid for the said military, marine, and police forces, at fares not exceeding twopence per mile for each commissioned officer proceeding on duty, such officer being entitled to conveyance in a first-class carriage, and not exceeding one penny for each mile for each soldier, marine, or private of the militia or police force, and also for each wife, widow, or child above twelve years of age of a soldier entitled by Act of Parliament or by competent authority to be sent to their destination at the public expense, children under three years of age so entitled being taken free of charge,

Certain companies to convey military and police forces at certain charges. 5 and 6 Vict., c. 55.

and children of three years of age or upwards, but under twelve years of age, so entitled, being taken at half the price of an adult; and such soldiers, marines, and privates of the militia or police force, and their wives, widows, and children so entitled, being conveyed in carriages which shall be provided with seats, with sufficient space for the reasonable accommodation of the persons conveyed, and which shall be protected against the weather; provided that every officer conveyed shall be entitled to take with him one hundredweight of personal luggage without extra charge, and every soldier, marine, private, wife, or widow shall be entitled to take with him or her half a hundredweight of personal luggage without extra charge, all excess of the above weights of personal luggage being paid for at the rate of not more than one halfpenny per pound, and all public baggage, stores, arms, ammunition, and other necessities and things (except gunpowder and other combustible matters, which the company shall only be bound to convey at such prices and upon such conditions as may be from time to time contracted for between the Secretary at War and the Company), shall be conveyed at charges not exceeding twopence per ton per mile, the assistance of the military or other forces being given in loading and unloading such goods.*

Cheap Trains Act, 1883.

[46 & 45 VICT., c. 34.]

Extract from

An Act to amend the Law relating to Railway Passenger Duty, and to amend and consolidate the Law relating to the conveyance of the Queen's Forces by Railway.
[20th August, 1883.]

Convey-
ance of the
Queen's
forces at
reduced
rates.

6. (1) For the purposes of moving by railway on any occasion of the public service—

(a) any of the officers or men in or belonging to Her Majesty's navy, or royal naval volunteers, and any other officers or men under the command or government of the Admiralty; and

(b) any of the officers or soldiers in Her Majesty's regular reserve or auxiliary forces (within the

44 & 45
Vict., c. 58.

* This section is repealed, except as to Ireland, and except as respecting the conveyance of forces by companies which lose the benefit of the Cheap Trains Act, 1882. (46 and 47 Vict., c. 34.) See s. 6 of this Act below.

meaning of the Army Act, 1881, or any Act amending the same) for the time being subject to military law ; and

- (c) any officers or men of any police force ;
- (all) and any of which officers, soldiers, and men are in this Act called the "forces") ;

every railway company shall, on the production of a route duly signed for the conveyance of the forces, provide conveyance for them and their personal luggage, and also for any public baggage, stores, arms, ammunition, and other necessities and things, whether actually accompanying the forces or not, at all usual times at which passengers are conveyed by the company, on such terms as may be agreed on between the railway company and the Secretary of State, Admiralty, or police authority, and subject to or in default of agreement on the following terms :

- (i.) The passenger carriages provided shall be of such classes in use on the railway, and in such proportions, as specified in the route, all carriages being protected from the weather and having proper accommodation :
- (ii.) The fares shall not exceed the following proportions of the fares charged to private passengers for the single journey by ordinary train in the respective classes of carriages specified in the route, that is to say, if the number of persons conveyed is less than one hundred and fifty, three fourths ; and if the number is one hundred and fifty or more, then for the first one hundred and fifty, three fourths, as for four officers and one hundred and forty-six soldiers or other persons ; and for the numbers in excess of the said one hundred and fifty, one half :
- (iii.) This section shall apply to such wives, widows, and children of members of the forces as are entitled to be conveyed at the public expense, in like manner as if they were part of the forces, but children less than three years old shall be conveyed free of charge, and the fare for a child more than three and less than twelve years old shall be half the fare payable under this section for an adult :
- (iv.) One hundredweight of personal luggage shall be conveyed by the railway company free of charge for every one conveyed under this section, who is required by the route to be conveyed first-class, and half a hundredweight for every other person conveyed and any excess of weight shall be

conveyed at not more than two-thirds of the rate charged to the public for excess luggage:

- (v.) The said public baggage, stores, arms, ammunition, necessities, and things shall be carried at rates not exceeding twopence per ton per mile, the assistance of the forces to be given when available in loading and unloading the same:
- (vi.) Provided that the company shall not be bound under this section to carry gunpowder or other explosive or combustible matters except on terms agreed upon between the company and the Admiralty or one of Her Majesty's Principal Secretaries of State, as the case may be.

(2.) For the purposes of this section a route duly signed shall be deemed to be a route issued and signed in accordance with section one hundred and three of the Army Act, 1881, or an order signed by a person authorised in this behalf by one of Her Majesty's Principal Secretaries of State, or a route or order signed by a person authorised in this behalf by the Admiralty, or, as regards the police, a route or order signed by a person authorised in this behalf by the police authority.

(3.) Fares payable under this section shall be exempt from passenger duty.

(4.) Where a company has by refusal or neglect to comply with an order of the Board of Trade or the Railway Commissioners lost the benefit of this Act, that company shall, until its compliance is certified as in this Act provided, be exempt from the provisions of this section, but shall be bound to convey all such persons and things as mentioned in this section on the same terms as if this Act had not been passed

The Regulation of the Forces Act, 1871. (a)

[34 & 35 VICT., c. 86.]

An Act for the better Regulation of the Regular and Auxiliary Land Forces of the Crown; and for other purposes relating thereto.

[17th August, 1871.]

WHEREAS it is expedient to provide for the better regu-

(a) Parts of this Act still in force have been omitted, as unnecessary for general reference. The parts repealed by the Reserve Forces Act, 1882, and the Militia Act, 1882, are omitted.

lation of the regular and auxiliary land forces of the Crown, and for other purposes relating thereto :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

PRELIMINARY.

1. This Act may be cited for all purposes as “The Short title. Regulation of the Forces Act, 1871.”

PART II.—AUXILIARY FORCES.

6. After a day to be named by order of Her Majesty in Council, all jurisdiction, powers, duties, command, and privileges over, of, or in relation to the * * yeomanry and volunteers of England, Scotland, and Ireland, or any of such forces, or any part thereof, vested in or exercisable by the lieutenants of counties, or by the Lord Lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall revert to Her Majesty, and shall be exercisable by Her Majesty, through Her Secretary of State, or any officers to whom Her Majesty may, by and with the advice of Her said Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof ; * * * and after the day named as last aforesaid all officers in the * * yeomanry and volunteers of England, Scotland, and Ireland shall hold commissions from Her Majesty, and such commissions shall be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued according to any law or custom for the time being in force, and all commissions held on the appointed day by officers in the * * yeomanry and volunteers shall be deemed to have been so issued.

Jurisdiction of lieutenants of counties in respect of auxiliary forces re-vested in Her Majesty.

Commissions or first appointments to the rank of cornet, ensign, or lieutenant in any regiment or corps of * * * yeomanry or volunteers shall be given to persons recommended by the lieutenants of the county to which such regiment or corps belongs, if a person approved by Her Majesty is recommended for any such commission or appointment by such lieutenant within thirty days after notice of a vacancy for such commission or appointment has been given to such lieutenant by the said Secretary of State by letter addressed to him by post.

PART IV.—MISCELLANEOUS AND DEFINITIONS.

Power of Government on occasion of emergency to take possession of railroads.

16. When Her Majesty, by Order in Council, declares that an emergency has arisen in which it is expedient for the public service that Her Majesty's Government should have control over the railroads in the United Kingdom, or any of them, the Secretary of State may by warrant under his hand empower any person or persons named in such warrant to take possession in the name or on behalf of Her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for Her Majesty's service at such times and in such manner as the Secretary of State may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the Secretary of State as to the user of such railroad or plant as aforesaid for Her Majesty's service.

Any warrant granted by the said Secretary of State in pursuance of this section shall remain in force for one week only, but may be renewed from week to week so long as, in the opinion of the said Secretary of State, the emergency continues.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of in pursuance of this section, out of moneys to be provided by Parliament, such full compensation for any loss or injury they may have sustained by the exercise of the powers of the Secretary of State under this section as may be agreed upon between the said Secretary of State and the said person or body of persons, or, in case of difference, may be settled by arbitration in manner provided by "The Lands Clauses Consolidation Act, 1845."

Where any railroad or plant is taken possession of in the name or on behalf of Her Majesty in pursuance of this section, all contracts and engagements between the person or body of persons whose railroad is so taken possession of and the directors, officers, and servants of such persons or body of persons, or between such person or body of persons and any other persons in relation to the working or maintenance of the railroad, or in relation to the supply or working of the plant of such railroad, which would, if such possession had not been taken, have been enforceable by or against the said person or body of persons, shall during the continuance of such possession be enforceable by or against Her Majesty.

For the purposes of this section "railroad" shall include any tramway, whether worked by animal or mechanical

power, or partly in one way and partly in the other, and any stations, works, or accommodation belonging to or required for the working of such railroad or trainway.

"Plant" shall include any engines, rolling stock, horses, or other animal or mechanical power, and all things necessary for the proper working of a railroad or tramway which are not included in the word "railroad."

Definitions.

19. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them ; that is to say :—

Interpretation of certain terms in the Act.

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State :

"Lieutenant of a County" includes a Vice-Lieutenant, also the Commissioners of Lieutenancy of the City of London, the Governor of the Isle of Wight, the Warden of the Cinque Ports, the Warden of the Stannaries, the Constable of the Tower, and any other officer, or officers, however named having a jurisdiction in relation to the General or Local Militia similar to that of Lieutenant or Lieutenants or Deputy Lieutenants of a county :

"Lord Lieutenant of Ireland" shall include the lords justices or other chief governors or governor of Ireland for the time being :

"Officer" means "commissioned officer."

Army Discipline and Regulation (Commencement) Act, 1879. (a)

[42 & 43 VICT., c. 32.]

An Act to bring into Force the Army Discipline and Regulation Act, 1879, and for other purposes.

[24th July, 1879.]

1. This Act may be cited for all purposes as the Army Discipline and Regulation (Commencement) Act, 1879. *Short title.*

2. The Army Mutiny Act means the Act of the session of the forty-first and forty-second years of the reign of Her present Majesty, chapter ten, intituled "An Act for *Definition of Army Mutiny Act and Marine Mutiny Act.*

(a) References to the Army Discipline and Regulation Act, 1879, now refer to the Army Act. The portions omitted, excepting the preamble, have been repealed.

“punishing mutiny and desertion, and for the better payment of the Army and their quarters,” as continued by the Act of the present session of Parliament, chapter four, intituled “An Act to continue for three months the Act of the session of the forty-first and forty-second years of the reign of Her present Majesty, chapter ten, intituled “An Act for punishing mutiny and desertion, and for “the better payment of the Army and their quarters.’”

The Marine Mutiny Act means the Act of the session of the forty-first and forty-second years of the reign of Her present Majesty, chapter eleven, intituled “An Act for the regulation of Her Majesty’s Royal Marine Forces “while on shore,” as continued by the Act of the present session of Parliament, chapter five, intituled “An Act to “continue for three months the Act of the session of the “forty-first and forty-second years of the reign of Her “present Majesty, chapter eleven, intituled ‘An Act for “the regulation of Her Majesty’s Royal Marine Forces “while on shore.’”

Adjustment
of past and
present
military
law, 42 & 43
Vict., c. 33.

. 4. Where in any place before the commencement of the Army Discipline and Regulation Act, 1879, a court-martial under the Army Mutiny Act or the Marine Mutiny Act has been convened for the trial of any offender, such trial may be carried on and the offender may be sentenced and punished in the same manner in all respects as if the Act under which the court-martial was held had not expired: Provided that the offender shall not be subjected to any greater punishment than he would be subject to for his offence if his offence had been committed against the Army Discipline and Regulation Act, 1879 (*a*).

Subject as aforesaid, all crimes and offences which have been committed against the Army Mutiny Act or any former act for punishing mutiny and desertion and for the better payment of the army and their quarters, and all offences which have been committed against the Marine Mutiny Act, or any former Act for the regulation of the Royal Marine Forces while on shore, or against any rules, regulations, or articles of war made or in force in pursuance of any of the said Acts may be tried and punished in like manner as if they had been committed against the Army Discipline and Regulation Act, 1879 (*a*), subject to the restrictions in the said Act contained as to the time within which persons may be tried or punished for offences in pursuance of the said Act.

All sentences imposed under the Army Mutiny Act or any former Act for punishing mutiny and desertion, and for the better payment of the army and their quarters, and all sentences imposed under the Marine Mutiny Act,

(*a*) See note (*a*), p. 795.

42 & 43
Vict., c. 33.

or any former Act for the regulation of the Royal Marine Forces while on shore, or under any rules, regulations, or articles of war made or in force by virtue of any of the said Acts, may, after the expiration of the said Acts, or any of them, be carried into effect in the same manner in all respects as if such Acts had not expired, and the Army Discipline and Regulation Act, 1879, had not come into force: Provided that the provisions of the Army Discipline and Regulation Act, 1879 (a), with respect to the commutation and remission of sentences and the discharge of offenders, shall be applicable to any offender sentenced under any of such former Acts, rules, regulations, or articles in the same manner as if he had been sentenced under the said Army Discipline and Regulation Act, 1879.

42 & 43
Vict., c. 37.
42 & 43
Vict., c. 32.

42 & 43
Vict., c. 33.

Every commission or warrant granted under the Army Mutiny Act and the Marine Mutiny Act, or either of such Acts, for the holding or convening of courts-martial, or for authorising any person to convene courts-martial, shall remain in force until revoked, and may be used for the purpose of holding or convening courts-martial or authorising any person to convene courts-martial, under the Army Discipline and Regulation Act, 1879 (a).

42 & 43
Vict., c. 33.

5. Any reference in any Act of Parliament or other document to the Army Mutiny Act or the Marine Mutiny Act, or any Act for the punishment of mutiny and desertion, or for the regulation of the Royal Marine Forces when on shore, or the articles of war made under any of such Acts, shall, after the commencement of the Army Discipline and Regulation Act, 1879, be deemed to refer to the corresponding provisions of that Act: Provided that * * * * * so much of the Army Mutiny Act as relates to the auxiliary forces and is not inconsistent with the provisions of the Army Discipline and Regulation Act, 1879, and also so much of the Army Mutiny Act as repeals or amends any other Act, shall continue in force so long and in the same places as the Army Discipline and Regulation Act, 1879, continues in force in such places.

Construction of Acts referring to the Mutiny Acts and Articles of War.
42 & 43
Vict., c. 33.

42 & 43
Vict., c. 33.

6. Any building or part of a building which at the commencement of the Army Discipline and Regulation Act, 1879, is by law set apart as a military prison shall be deemed, until otherwise directed by a Secretary of State in pursuance of the said Act, to be a military prison set apart and declared under the Army Discipline and Regulation Act, 1879.

Saving for existing military prisoners.
42 & 43
Vict., c. 33.

(a) References to the Army Discipline and Regulation Act, 1879, now refer to the Army Act.

Regulation of the Forces Act, 1881. (a)

[44 and 45 VICT., c. 57.]

An Act to amend the Law respecting the Regulation of Her Majesty's Forces, and to amend the Army Discipline and Regulation Act, 1879.

[27th August, 1881.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

Short title. 1. This Act may be cited as the Regulation of the Forces Act, 1881.

Defini- 2. The Army Discipline and Regulation Act, 1879, is
tions. in this Act referred to and may be cited as the Army Act,
42 & 43 1879.
Vict., c. 33.

Expressions in this Act shall, except so far as otherwise provided by this Act or the context otherwise requires, have the same meaning as in the Army Act, 1879, as amended by this Act.

PART I.—VOLUNTEERS.

Removal of
doubts as to
consolidation
of corps
under 28 &
27 Vict.,
c. 65.

9. Whereas under the Volunteer Act, 1863, provision is made for the government and organisation of volunteer corps whose services are accepted by Her Majesty, and for all lands, money, effects and other property belonging to the corps (in this Act referred to as the corps property), being vested in the commanding officer of the corps for the time being, and being managed in accordance with rules of the corps made under that Act :

And whereas provision is also made by the said Act for separate volunteer corps being formed under the authority of the Secretary of State into a united body for military and administrative purposes :

And whereas under the authority of the Secretary of State separate volunteer corps (in this Act referred to as

(a) The sections omitted have been repealed by the Army Act, and by the Reserve Forces Act, 1882, and the Militia Act, 1882, and the Regimental Debts Act, 1893.

constituent corps) have been consolidated into one corps, and form corresponding companies in such consolidated corps, and doubts have arisen with respect to such consolidation, and it is expedient to remove these doubts: Be it therefore enacted as follows :

(1.) Every volunteer corps formed under the authority of the Secretary of State, whether before or after the passing of this Act, by the consolidation of two or more volunteer corps, shall as from the date of consolidation be deemed to have been a volunteer corps duly formed under the Volunteer Act, 1863, whose services have been accepted by Her Majesty, and the officers and volunteers belonging to the constituent corps shall be deemed to have been duly appointed and enrolled as officers and volunteers of the consolidated corps, and the commanding officer of the consolidated corps shall, for the purposes of the Volunteer Act, 1863, be deemed to be the commanding officer thereof and of every part thereof, and the corps property vested in, and the liabilities attached to, the commanding officer of the constituent corps on behalf of the corps shall be deemed on consolidation to have become vested in and attached to the commanding officer of the consolidated corps, and all agreements with, grants to, and deeds and documents in favour of any of the constituent corps shall enure for the benefit of and be deemed to refer to the companies in the consolidated corps which correspond to the said constituent corps.

(2.) The said property shall be managed in such manner and for such purposes as, subject to the provision in this section contained, is directed by the rules of the consolidated corps ;

Provided that if and so long as any companies in the consolidated corps which correspond to the said constituent corps continue to exist, and if no other arrangement has been made either before or after the passing of this Act, then, if bye-laws are from time to time made for the purpose with the approval of the commanding officer of the consolidated corps, such bye-laws, so far as they extend, shall, to the exclusion of the said rules, determine the manner and purposes in and for which such property shall be managed.

(3.) The officers and volunteers of the companies in the consolidated corps which correspond to the said constituent corps shall indemnify the commanding officer of the consolidated corps against all debts and liabilities for which the constituent corps was liable before the consolidation, or which may subsequently arise in respect of the property held by him, which is managed in accordance with the bye-laws in this section mentioned.

(4.) No officer or volunteer who belonged to a constituent corps at the time of its consolidation shall, without his consent, be removed to any of the companies not corresponding to that corps.

(5.) Any question which arises under this section as to whether any companies do or do not correspond to a constituent corps, or continue to exist, and any difference between the companies and the consolidated corps, or the commanding officer thereof, in relation to the bye-laws, property, debts, or liabilities referred to in this section, shall be referred for the decision of the Secretary of State, whose decision shall be final.

(6.) The provisions of this section with respect to companies shall apply to troops and batteries respectively, and the provisions of this section with respect to companies corresponding to constituent corps, shall apply to the case of a single troop, battery, or company corresponding to a constituent corps.

PART III.—MISCELLANEOUS.

Commencement, Savings, and Repeal.

Commence-
ment of
Act. 52. This Act shall come into operation as follows, that is to say :—

- (a) In the United Kingdom, the Channel Islands, and the Isle of Man, at the expiration of one month after the passing of this Act ;
- (b) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, at the expiration of two months after the passing of this Act ; and
- (c) Elsewhere, whether within or without Her Majesty's dominions, at the expiration of six months after the passing of this Act.

And the day upon which this Act so comes into force in any place is in this Act in reference to such place referred to as the commencement of this Act ;

Provided that this Act shall, if promulgated in any general order in any place out of the United Kingdom, the Channel Islands, and the Isle of Man, come into full force in that place from and after the date named in such general order, anything in this section contained to the contrary notwithstanding, and such date shall be deemed in reference to such place to be the commencement of this Act.

53. Where a man belonging to the regular forces * * * Saving for existing men. was enlisted before the passing of this Act or before the date of an order or regulation made under this Act, nothing in this Act shall require such man without his consent to serve in, or be appointed, transferred, posted, or attached to any military body in, or to which he could not have been required without his consent to serve, or be appointed, transferred, posted, or attached, if this Act or the said order or regulation, as the case may be, had not been made, or to serve for any longer period than that for which he was before the passing of this Act, or before the date of such order or regulation, as the case may be, liable to serve.

54. The Acts specified in the Schedule to this Act shall Repeal of Acts. be repealed as from the commencement of this Act to the extent in the third column of that Schedule specified.

Provided that—

- (a) This Act, or any repeal by this Act, shall not affect anything done or suffered, or any rights or liabilities acquired or accrued, before the commencement thereof, and any proceedings for carrying into effect anything commenced before the commencement of this Act may be carried on and completed as if this Act had not passed.
- (b) Any liability to service or annual training under any enactment hereby repealed, shall, as regards any man to whom the provisions of this Act with respect to such service or training do not apply, continue and be enforced as if the enactment had not been repealed.
- (c) Any enactment relating to the reckoning of the service of a soldier for the purpose of discharge, shall continue to apply, so far as is necessary for the purposes of this Act, as regards any soldier to whom section seventy-six of the Army Act, 1879, does not apply.
- (d) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may be carried on and completed, and the offender may be tried and punished, as if this Act had not passed; but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act, so however that a person shall not be subject to any greater punishment than he is subject to before the commencement of this Act, nor to any

(M.L.)

3 F

punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

Pensions of
soldiers
formerly in
Indian
Forces.

55. Whereas under the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter seventy-four, intituled "An Act to render lawful the enlistment of persons transferred from the Indian to the general forces of Her Majesty, and to provide in certain respects for the rights of such persons," it was provided that where a soldier was transferred from Her Majesty's Indian forces to Her Majesty's general forces, it should be lawful for the Commissioners of Chelsea Hospital to calculate the pension of such person in accordance with the regulations either of Her Majesty's Indian or of Her Majesty's general forces, according as such soldier might choose :

And whereas doubts have arisen as to whether certain additions to pensions granted by Royal Warrant to the above-mentioned soldiers in respect of service over and above the term of twenty-one years can, having regard to the above-recited Act, be lawfully granted by the said Commissioners to the said soldiers, and it is expedient to remove such doubts: Be it therefore enacted as follows:—

Nothing in the Act above in this section recited shall prevent the Commissioners of Chelsea Hospital from granting to a soldier such pension as is for the time being authorised by Royal Warrant (a).

SCHEDULE.

[ENACTMENTS REPEALED.]

Reserve Forces Act, 1882.

[45 & 46 Vict., c. 48.]

ARRANGEMENT OF SECTIONS.

Preliminary.

Section.

1. Short title.
2. Commencement of Act.

(a) Pensions are provided by Royal Warrant, 15th August, 1882.

PART I.—ARMY RESERVE.

Section.

3. Establishment of army reserve.
4. Procedure and term of service on enlistment or re-engagement.
5. Calling out army reserve in aid of the civil power.
6. Punishment of certain offences by army reserve men.
7. Men exempt from parish offices, &c.

PART II.—MILITIA RESERVE.

8. Establishment of militia reserve.
9. Term of service and re-engagement.
10. Effect of enlistment on position as militiamen.

PART III.—GENERAL.

Annual Training and Calling out on Permanent Service of Reserves.

11. Annual training of reserve forces.
12. Calling out reserve forces on permanent service.
13. Assembly of Parliament when reserve forces ordered to be called out on permanent service.
14. Service of reserve men called out.
15. Punishment for non-attendance for annual training or permanent service, &c.
16. Supplemental provisions as to deserters and absentees.
17. Punishment for inducing reserve man to desert or absent himself.

Supplemental.

18. Attestation of men enlisting in reserve forces.
19. Record of illegal absence of reserve men.
20. Orders and regulations as to reserve forces.
21. Exercise of powers vested in holder of military office.
22. Pensions of army reserve men.
23. Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces.
24. Notices.
25. Trial of offences.
26. Provisions as to offences triable both by court-martial and by court of summary jurisdiction.
27. Evidence.
28. Definitions.
29. Repeal of Acts.

SCHEDULE.

(M.L.)

An Act to consolidate the Acts relative to the Reserve Forces.

[18th August, 1882.]

45 & 46 Vict., c. 48.

Be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

Short title. 1. This Act may be recited as the Reserve Forces Act, 1882.

Commence-
ment of
Act. 2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

PART I.—ARMY RESERVE.

Establish-
ment of
army
reserve.

3. It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows :—

Class I.—The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who, having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act, 1881, or be enlisted or re-engaged in pursuance of this Act.

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions ; and in the event of such direction being given, men in the second division shall not be liable to be called out on permanent service until directions have been given for calling out the whole of the first division on such service.

Class II.—The second class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

(a) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital ; or

- (b) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment,

may be enlisted or re-engaged in pursuance of this Act.

4. Every man who enters the army reserve—

Procedure and term of service on enlistment or re-engagement.

- (a) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act, 1881, shall be enlisted; and
(b) If he is re-engaged in the army reserve, shall be re-engaged, in such manner, and for a term of such length, and to begin at such date, as may be prescribed.

5. (1.) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace.

Calling out army reserve in aid of the civil power.

(2.) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary.

(3.) Any power by this section vested in a Secretary of State may, as regards men resident in Ireland, be exercised also by the Lord Lieutenant.

6. (1.) Where a man belonging to the army reserve—

Punishment of certain offences by army reserve men.

- (a) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve; or
(b) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement; or
(c) Uses threatening or insulting language, or behaves in an insubordinate manner to any officer or warrant or non-commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law; or
(d) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act; or

- (e) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

he shall be guilty of an offence.

(2.) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows ; that is to say :—

- (a) Be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as is in the Army Act, 1881, mentioned ; or
- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days, and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

(3.) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under sub-section two or sub-section three of section one hundred and forty-two of the Army Act, 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court.

(4.) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure.

(5.) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure.

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office.

Men exempt from parish offices, &c.

PART II.—MILITIA RESERVE.

8. (1.) It shall be lawful for Her Majesty to keep up a force in the United Kingdom called the militia reserve, consisting of such number of men as may from time to time be provided by Parliament.

Establishment of militia reserve.

(2.) A Secretary of State may cause to be enlisted from time to time in the militia reserve such militiamen as are willing to enlist themselves, not exceeding the prescribed number (if any) out of any particular corps.

9. (1.) Every man enlisted in the militia reserve shall be enlisted to serve either for six years or for the residue of the term of his militia engagement.

Term of service, and re-engagement.

(2.) A man in the militia reserve who is re-engaged as a militiaman may also be re-engaged in the militia reserve for the prescribed period, not exceeding the term for which he is re-engaged as a militiaman.

10. (1.) A man belonging to the militia reserve shall, subject to the provisions of this Act, continue to be for all purposes a militiaman, and if he has enlisted in the militia reserve for a period which will expire subsequently to the expiration of his militia engagement, he shall be deemed to have enlisted in the militia for such longer period.

Effect of enlistment on position as militiaman.

(2.) A Secretary of State may in his discretion at any time discharge a man belonging to the militia reserve from his engagement, and a man so discharged shall thenceforth for the remainder of his engagement in the militia reserve be a militiaman only, and may be discharged from the militia or otherwise dealt with accordingly.

(3.) When a man has enlisted in the militia reserve, his place in the militia shall not be deemed vacant until directions are given for calling him out on permanent service, but when such directions are given his place shall be deemed vacant, and shall be filled in manner provided by law with respect to vacancies in the militia.

(4.) When a man who has been so called out is released from permanent service on the ground of his services being no longer required, he shall again become for the remainder (if any) of his engagement a militiaman in the corps to which he previously belonged, with rank and pay not lower than he was entitled to before he entered on permanent service; and if there is no vacancy, he shall be deemed to be a supernumerary until there is a vacancy.

PART III.—GENERAL.

Annual Training and Calling out on Permanent Service of Reserves.

Annual
training of
reserve
forces.

11. (1.) All or any of the men belonging to the army reserve and the militia reserve respectively may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year, in the case of a man belonging to the army reserve, twelve days or twenty drills, and in the case of a man belonging to the militia reserve, fifty-six days.

(2.) Every man so called out may, during his annual training, be attached to and trained with a body of the regular or auxiliary forces.

(3.) The annual training under this section of a man belonging to the militia reserve shall be in substitution for the annual training to which he is liable as a militia-man.

Calling out
reserve
forces on
permanent
service.

12. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve and the militia reserve, or either of them, shall be called out on permanent service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the forces or force mentioned in the proclamation, or all or any of the men belonging thereto.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4.) A proclamation under this section shall for the purposes of the Army Act, 1881, be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service.

Assembly of
Parliament
when
reserve
forces
ordered to
be called
out on
permanent
service.

13. Whenever Her Majesty orders the army reserve and militia reserve, or either of them, to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such

proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

14. (1.) A man belonging to either of the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act, 1881, be detained in service after the time at which he would otherwise be entitled to be discharged.

Service of
reserve men
called out.

(2.) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act, 1881, accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps of the regular forces, so, however, that he shall not without his consent be appointed or transferred to a corps which is not in the arm or branch in which he previously served.

(3.) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom, and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom.

15. (1.) When a man belonging to the army or militia reserve is called out for annual training or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall—

Punish-
ment for
non-attend-
ance for
annual
training or
permanent
service, &c.

(a) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881; and

(b) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2.) A man belonging to the army or militia reserve who commits an offence under this section, or under section twelve or section fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

- (a) Be liable to be tried by court-martial, and convicted and punished accordingly; or
- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine;

and may in any case be taken into military custody.

Supple-
mental pro-
visions as
to deserters
and
absentees.

16. (1.) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a man who is a deserter or absentee without leave from the army or militia reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2.) Any person who falsely represents himself to be a deserter or absentee without leave from the army or militia reserve shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

Punish-
ment for
inducing
reserve man
to desert or
absent him-
self.

17. (1.) Any person who by any means whatever—

- (a) Procures or persuades any man belonging to the army or militia reserve to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army or militia reserve to commit such offence; or
- (b) Knowing that a man belonging to the army or militia reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing; or
- (c) Knowing any man belonging to the army or militia reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a man belonging to the army or militia reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881; and any person who, knowing any man belonging to the army or militia reserve to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section.

Supplemental.

18. (1.) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army or militia reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act, 1881 (that is to say) :—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence,

shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) Of "man," or, if the context so requires, "reserve man," for "soldier," and of "army reserve or militia reserve, as the case may be," for "regular forces;" and

(b) In section one hundred, so far as relates to the militia reserve, of "one whole period of annual training" for "three months."

(2.) A man so enlisting may be attested by a regular officer, or by a militia officer, and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the army or militia reserve, be construed as if a justice of the peace in those sections included such an officer.

Record of
illegal
absence of
reserve
man.

19. (1.) Where a man belonging to the army reserve or militia reserve is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days; and the record mentioned in that section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed.

(2.) Where a man belonging to the army reserve or militia reserve fails to appear at the time and place of which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence.

Orders and
regulations
as to reserve
forces,

20. (1.) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve and the militia reserve, or either of them, and with respect to other matters and things relating to the army reserve and the militia reserve or either of them, including any matter by this Act authorized to be prescribed, or expressed to be subject to orders or regulations.

(2.) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(3.) Where a man entered the army or militia reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made.

(4.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

21. (1.) Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may in relation to the reserve forces be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

Exercise of powers vested in holder of military office.

(2.) Where by this Act, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

Pensions army reserve men.

23. (1.) For the purpose of section one hundred and forty-three of the Army Act, 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army or militia reserve, when going to or returning from any place at which they are required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty.

Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces.

(2.) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessaries and things, shall apply as if the army and militia reserve were such part of the regular forces.

24. With respect to notices required in pursuance of the orders or regulations in force under this Act to be given to men belonging to the army or militia reserve, the following provisions shall have effect :—

Notices.

- (1) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner ;
- (2) Evidence of the delivery at the last registered place of abode of a man belonging to the army or

militia reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;

- (3) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army or militia reserve is situate shall be sufficient notice to such man, notwithstanding that a copy of such notice is not served on him ;
- (4) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Trial of
offences.

25. (1.) Any offence which under this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be recovered in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act.

(3.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise.

(4.) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man.

26 With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognisable both by a court-martial and by a court of sum-

Provisions
as to
offences

mary jurisdiction, the following provisions shall have effect :—

- (1) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act (a).
- (2) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the powers or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.
- (4) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

triable both by court-martial and by court of summary jurisdiction.

27. (1.) Section one hundred and sixty-four of the Army Act, 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law), shall apply to a man belonging to the army or militia reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

Evidence.

(2.) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence), shall apply to all proceedings under this Act.

28. In this Act, unless the context otherwise requires—

Definitions.

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer.

The expression "out-pensioners of Chelsea Hospital" includes all persons whose claims for prospective or

(a) He is not to be tried by a court of summary jurisdiction without the written sanction of an officer who has power to direct his trial by court-martial, or some authority superior to that officer, Royal Warrant, 28th December, 1882,

deferred pension have been registered in virtue of any warrant of Her Majesty.

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Other expressions have the same meaning as they have in the Army Act, 1881.

In the Army Act, 1881, the expressions "army reserve force" and "militia reserve force" shall respectively mean the army reserve and militia reserve under this Act.

Repeal of
Acts.

29. The Acts mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned:

Provided as follows—

(1.) Such repeal shall not revive any enactment, and shall not, save as herein otherwise provided, affect anything previously done or suffered, or any existing right or title, or any remedy in respect thereof, or the proof of any past Act.

(2.) All orders, warrants, regulations, and directions in relation to the army reserve force or to the militia reserve force which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly.

(3.) Any man who at the commencement of this Act belongs to the first or second class of the army reserve force, or to the militia reserve force, shall continue to belong to the first or second class of the army reserve or to the militia reserve under this Act, as the case may be, in like manner as if he had entered the same in pursuance of this Act.

(4.) Where a man belonging to either the army reserve force or the militia reserve force entered such force before the passing of the Regulation of the Forces Act, 1881, or before the date of any regulation made under the said Act, nothing in the said Act or regulation or in this Act shall require such man without his consent to serve in or be appointed, transferred, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached, if the Regulation of the Forces Act, 1881, or this Act, or the said regulation, as the case may be, had not been passed or made, or to serve for any longer period than that for which he was before the passing of the Regulation of the Forces Act, 1881, or before the date of such regulation, as the case may be, liable to serve.

(5.) In the case of any offence committed before the commencement of this Act if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may

44 & 45 Vict.
c. 57.

carried on and completed, and the offender may be tried and punished, as if this Act had not passed ; but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act (including the dealing with the case by the commanding officer), so however that a person shall not be subject for any such offence to any greater punishment than that to which he was subject before the commencement of this Act, nor to any punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

Where a proclamation has been issued, or any man belonging to the army or militia reserve, has been called out before the commencement of this Act, this Act shall apply as if such proclamation had been issued, and men called out in pursuance of this Act.

SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of an Act in this Schedule is inclusive of the word, section or other part first and last mentioned or otherwise referred to as forming the beginning, or as forming the end of the portion described in the description or citation.

| | | |
|----------------------|---|---|
| 30 & 31 Vict. c. 110 | The Reserve Force Act, 1867. | The whole Act. |
| 30 & 31 Vict. c. 111 | The Militia Reserve Act, 1867. | The whole Act. |
| 33 & 34 Vict. c. 67 | The Army Enlistment Act, 1870. | Sections fourteen and fifteen and section twenty, except so far as it relates to the militia, yeomanry, or volunteers. |
| 34 & 35 Vict. c. 86 | The Regulation of the Forces Act, 1871. | So much of sections seven and nineteen as relates to the army reserve or the militia reserve. |
| 36 & 37 Vict. c. 68 | An Act for extending the Period of Service in the Militia; and for other purposes. | Section six. |
| 41 & 42 Vict. c. 10 | An Act for Punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters. | Sections forty-two, forty-seven, forty-eight, and one hundred and nine. |
| 42 & 43 Vict. c. 32 | The Army Discipline and Regulation (Commencement) Act, 1879. | Section five, from "Any reference in the Reserve Force" to the end of the section, and so much of the rest of the section as relates to the reserve forces or keeps in force any portion of the Army Mutiny Act relating to the reserve forces. |
| 42 & 43 Vict. c. 33 | The Army Discipline and Regulation Act, 1879. | So much as is unrepealed. |
| 44 & 45 Vict. c. 57 | The Regulation of the Forces Act, 1881. | Sections ten to thirteen, and forty-five, and so much of section fifty-three as relates to the reserve forces. |
| 44 & 45 Vict. c. 58 | The Army Act, 1881. | Section one hundred and sixty-three, from "evidence of the delivery" to "knowledge of such man" (being paragraph (f) of sub-section one); section one hundred and ninety, from "the expression the army reserve force" to "Militia Reserve Act, 1867, and any Act amending the same;" and section one hundred and ninety-three from "so much of the Army Discipline and Regulation Act, 1879," to the end of the section. |

Reserve Forces Act, 1890.

[53 & 54 VICT., c. 42.]

An Act to remove certain doubts which have arisen under the Reserve Forces Act, 1882, and for other purposes connected therewith.
[14th August, 1890.]

Whereas certain men engaged in railway, post office, or telegraph service, and being volunteers, have been enlisted in Her Majesty's regular forces, and immediately upon such enlistment been transferred, under the Army Act, 1881, to the reserve, and have been attached as supernumeraries to a volunteer corps, and doubts have arisen as to whether such enlistment, transfer, and attachment are authorised by law, and it is expedient to remove such doubts :

44 & 45 Vict.
c. 58.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. It is hereby declared that regulations of a Secretary of State under the Army Act can authorise any man having the special qualifications prescribed by those regulations to be enlisted in any of Her Majesty's regular forces, and immediately upon such enlistment to enter the reserve.

Authority
to transfer
men to
reserve
immedi-
ately on
enlistment.

2. Subject to any order or regulations under the Reserve Forces Act, 1882, any man belonging to the Army Reserve may be attached to a volunteer corps for the purpose of drill or training, and while so attached shall for the purposes of the Volunteer Acts, 1863 and 1869, and any Acts amending the same, be a volunteer of such corps without prejudice to his position as a man belonging to the Army Reserve.

Training of
reserve men
with volun-
teers.
45 & 46 Vict.
c. 58.
26 & 27 Vict.
c. 65.
32 & 33 Vict.
c. 81.

3. Any enlistment, transfer to the Army Reserve, or attachment to a volunteer corps of any man which was effected before the passing of this Act, and would have been valid if done subsequently to the passing of this Act, shall be deemed to have been valid.

4. This Act shall be construed as one with the Reserve Forces Act, 1882, and that Act and this Act may be cited together as the Reserve Forces Acts, 1882 and 1890, and this Act may be cited as the Reserve Forces Act, 1890.

Short title
and con-
struction.

Militia Act, 1882.

[45 & 46 Vict., c. 49.]

ARRANGEMENT OF SECTIONS.

Preliminary.

Section.

1. Short title.
2. Commencement of Act.

PART I.—MAINTENANCE AND GOVERNMENT.

3. Raising any number of militia.
4. Organisation of militia.
5. Vesting in Her Majesty of jurisdiction under certain Acts in relation to the militia.
6. First appointments to lowest rank of militia officer.

PART II.—VOLUNTARY ENLISTMENT.

7. Raising of men by voluntary enlistment.
8. Enlistment, term of service, and re-engagement.
9. Application to militia recruits of certain enlistment sections of 44 & 45 Vict. c. 58.
10. Enlistment of men discharged with disgrace from army or navy, or contrary to rules.
11. Enlistment of militiamen in regular forces.

PART III.—GENERAL PROVISIONS.

Service and Oath.

12. Area of service of militia.
13. Oath of allegiance of militiamen.

Training.

14. Preliminary training of militia recruits.
15. Calling up for instruction.
16. Annual training.
17. Extension, reduction, or suspension of annual training.

Embodiment.

18. Embodiment of militia.
19. Assembly of Parliament when militia is ordered to be embodied.

Provisions common to Annual Training and Embodiment.

Section.

20. Disembodying of militia.
21. Notice of times and places of attendance for annual training or embodiment.
22. General provision as to notices.

Desertion and Fraudulent Enlistment.

23. Punishment for non-attendance for preliminary or annual training or embodiment, and for desertion or absence without leave.
24. Supplemental provision as to deserters and absentees.
25. Punishment for inducing militiaman to desert or absent himself.
26. Fraudulent enlistment or false answer of militiaman.
27. Liability of deserter, absentee, or fraudulent enlistee to further service.
28. Record of illegal absence of militiamen.

Lieutenants and Deputy Lieutenants of Counties.

29. Appointment of lieutenants of counties.
30. Appointment, approval, and removal of deputy lieutenants.
31. Provision for absence or disability of lieutenant.
32. Appointment of vice-lieutenant.
33. Qualifications of deputy lieutenants.
34. Delivery, enrolment, and return of qualifications, and gazetting of commissions.
35. Penalty for acting as deputy lieutenant without being qualified, &c.
36. Powers, &c., of lieutenants and deputy lieutenants.

Quotas.

37. Quotas of militia.

Civil Rights and Exemptions.

38. Militia commissions not to vacate seats in Parliament.
39. Attendance of voters at parliamentary elections.
40. Performance of duties of sheriff, if a militia officer, during embodiment.
41. Exemption of militiamen.

Legal Proceedings.

42. Trial of offences and recovery and application of fines under Militia Acts.
43. Provision as to offences triable both by court-martial and by court of summary jurisdiction.
44. Evidence,

Miscellaneous.

Section.

- 45. Militia returns, how to be made.
- 46. Protection of persons acting under Militia Acts.
- 47. Exercise of powers vested in holder of military office.

Provisions as to special Localities.

- 48. Provisions as to counties for purposes of Militia Acts.
- 49. Application of Militia Acts to certain places :

Isle of Wight.
Tower Hamlets.
Cinque Ports.
Haverfordwest.
Miners of Cornwall and Devon.

- 50. Application of Act to City of London.

Definitions.

- 51. Definitions.

Application of Act to Scotland.

- 52. Modifications in application of Act to Scotland.

Application of Act to Ireland.

- 53. Modifications in application of Act to Ireland.

Repeal.

- 54. Repeal of Acts.

FIRST SCHEDULE :

Places included in counties for purposes of Militia Acts.

SECOND SCHEDULE :

Enactments repealed.

THIRD SCHEDULE :

Enactments re-enacted with respect to local militia.

An Act to consolidate the Acts relating to the Militia.

[18th August, 1882.]

[45 and 46 Vict., c. 49.]

Whereas it is expedient to re-enact the Militia (Voluntary Enlistment) Act, 1875 (which consolidated divers enactments applicable to the militia of the United Kingdom), with such modifications as are rendered necessary by the passing of the Regulations of the Forces Act, 1881, and the Army Act, 1881, and are otherwise expedient :

38 & 39 Vict.
c. 69.
44 & 45 Vict.
c. 57.
44 & 45 Vict.
c. 58.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as the Militia Act, 1882.
2. This Act shall come into operation on the first day of January, one thousand eight hundred and eighty-three (which day is in this Act referred to as the commencement of this Act).

Short title.
Commence-
ment of
Act.

PART I.—MAINTENANCE AND GOVERNMENT.

3. It shall be lawful for Her Majesty to raise and keep up a militia, consisting of such number of men as may from time to time be provided by Parliament.

Raising and
number of
militia.

4. (1.) Subject to the provisions of the Militia Acts, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the militia, and with respect to all other matters and things relating to the militia, including any matter by this Act authorised to be prescribed, or expressed to be subject to orders or regulations.

Organisa-
tion of
militia.

(2.) The said orders may provide for the formation of militiamen into regiments, battalions, or military bodies, and for the formation of such regiments, battalions, or military bodies into corps, either alone or jointly with any other part of Her Majesty's forces, and for appointing, transferring, or attaching militiamen to corps, and for posting, attaching, or otherwise dealing with militiamen within the corps, and may regulate the appointment, rank, duties, and numbers of the militia officers and non-commissioned officers.

(3.) Subject to the provisions of any such order, a

Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(4.) Provided that the said orders or regulations shall not—

- (a) Affect or extend the term for which or the area within which a militiaman is liable under the Militia Acts to serve ; or
- (b) Authorise a militiaman when belonging to one corps to be transferred without his consent to another corps ; or
- (c) Where the corps of a militiaman includes any battalion or other body of the regular forces, authorize him to be posted without his consent to that battalion or body.

(5.) Where a militiaman was enlisted or re-engaged before the date of any order or regulation under this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.

(6.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

Vesting in Her Majesty of jurisdiction under certain Acts in relation to the militia.

5. All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the militia, or any part thereof, which under any Act, other than this Act, are vested in or exercisable by the lieutenants of counties, or by the Lord Lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall be exercisable by Her Majesty, through a Secretary of State or any officers to whom Her Majesty may, by the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof ; saving, nevertheless, to the lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the militia by ballot, and the proceedings incidental thereto.

First appointments to lowest rank of militia officer.

6. First appointments to the lowest rank of militia officer in any corps shall be given to persons recommended by the lieutenant of the county, if a person approved by Her Majesty is recommended by such lieutenant for any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant in

the prescribed manner provided the person or persons fulfil all the prescribed conditions as to age, physical fitness, and educational qualifications; and where a corps comprises militiamen of two or more counties, the recommendations for such first appointments shall be made by the lieutenants of the respective counties in such rotation or otherwise as may be from time to time prescribed.

PART II.—VOLUNTARY ENLISTMENT.

7. Subject to the provisions of this Act, private militiamen may be raised by voluntary enlistment by such persons and in such manner and subject to such regulations as may be prescribed, and this part of this Act shall apply only to persons who have voluntarily enlisted.

Raising of men by voluntary enlistment,

8. (1.) Every militiaman enlisted under this Act shall be enlisted as a militiaman for some county, and shall forthwith be appointed to serve in a corps for that county, or for some area comprising the whole or part of that county.

Enlistment, term of service, and re-engagement.

(2.) Every militiaman enlisted under this Act shall be enlisted to serve for such period, not exceeding six years, as may be prescribed, and such period shall be reckoned from the date of his attestation.

(3.) Every militiaman enlisted under this Act may from time to time within twelve months of the end of his current term of service be re-engaged for such period, not exceeding six years, from the end of that current term, as may be prescribed.

(4.) A militiaman on re-engagement shall make the prescribed declaration before a justice of the peace or an officer.

(5.) Militiamen enlisted or re-engaged under this Act shall, for the purposes of any enactment referring to persons enrolled in the militia, be deemed to be enrolled.

9. (1.) The following sections of the Army Act, 1881, shall apply to militia recruits; that is to say:

Application to militia recruits of certain enlistment sections of 44 & 45 Vict. c. 58.

Section eighty (relating to the mode of enlistment and attestation);—

Section ninety-six (relating to the claims of masters to apprentices);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence;

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution—

(a) of “militia” for “regular forces,” and of “militiaman” for “soldier”; and

(b) (in section one hundred) of “during three months, “or during the whole period of preliminary training if less than three months, or during “one whole period of annual training” for “during three months.”

(2.) A recruit may be attested by any lieutenant or deputy-lieutenant of any county in the United Kingdom, or by a regular officer, or by a militia officer, and the sections of the Army Act, 1881, in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the militia, be construed as if a justice of the peace in those sections included such lieutenant, deputy-lieutenant, or officer.

(3.) A man enlisted in the militia, until duly discharged in the prescribed manner, shall remain subject to this Act as a militiaman.

Enlistment
of men dis-
charged
with dis-
grace from
army or
navy, or
contrary to
rules.

10. (1.) If a person—

(a) Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the militia without declaring the circumstances of his discharge or dismissal; or

(b) Is concerned when subject to military law in the enlistment for service in the militia of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against the Army Act, 1881, or this Act; or

(c) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of militiamen,

such person shall be guilty of an offence.

(2.) A person guilty of an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

(a) Be liable to be tried by court-martial, and on con-

viction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act, 1881, as the case may be ; or

- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than two and more than six months ;

and may in any case be taken into military custody.

(3.) For the purpose of this section the expression "discharged with disgrace" means discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude.

11. Militiamen may, if it is so prescribed, and subject to the prescribed conditions (if any), enlist in the regular forces; and a militiaman so enlisting in the regular forces shall be deemed to be discharged from the militia.

Enlistment of militiamen in regular forces.

PART III.—GENERAL PROVISIONS.

Service and Oath.

12. (1.) Any part of the militia shall be liable to serve in any part of the United Kingdom, but no part of the militia shall be carried or ordered to go out of the United Kingdom.

Area of service of militia.

(2.) Provided that if any part of the militia make a voluntary offer certified by their commanding officer to extend their services to the Islands of Guernsey, Jersey, Alderney, and Sark, the Isle of Man, Malta, and the garrison of Gibraltar, or any of them, it shall be lawful for Her Majesty, if she thinks fit, to accept such offer and to employ the said part of the militia accordingly; and where such offers are made by several parts of the militia it shall be lawful for Her Majesty, as may seem fit, to accept some and refuse others of such offers.

(3.) It shall be lawful for Her Majesty to direct the commanding officer of any part of the militia to propose to that part to make an offer to extend to the area of their services as aforesaid under such regulations as Her Majesty may please to appoint.

(4.) A person shall not be compelled to make an offer to serve as aforesaid, or be engaged so to serve, except by his own consent ;

and a commanding officer shall not certify any voluntary offer previously to his having explained to every person offering so to serve that the offer is to be purely voluntary on his part.

Oath of
allegiance
of militia-
man!

13. Every militiaman raised under this Act or under any other of the Militia Acts shall take the following oath; that is to say:—

“I, A.B., do solemnly promise and swear, that I will be faithful to [*here insert name of sovereign for time being*], her [*or his*] heirs and successors, and that I will faithfully serve in the militia until I shall be discharged.”

And such oath may be administered by any lieutenant or deputy lieutenant of a county, or by any justice of the peace, or by any regular officer or militia officer, and in the case of a militiaman enlisted under this Act shall be specified in the attestation paper.

Training.

Preliminary
training of
militia
recruits.

14. (1.) Every militiaman shall attend for preliminary training at such place or places within the United Kingdom, at such time or times, and for such period or periods, not exceeding in the whole six months, as may be prescribed, and may be trained by such officers, non-commissioned officers, and men of the regular forces or of the militia as may be prescribed.

(2.) The time of such preliminary training shall not be included in the time during which such man is liable to be called out for annual training.

Calling up
for instruction.

15. Any orders or regulations under this Act may provide for any militia officer or militiaman, with his own consent, being called up for the purpose of instruction.

Annual
training.

16. Save as otherwise provided by this Act, the militia shall be annually trained for not less than twenty-one nor more than twenty-eight days in every year, at such times and at such places in any part of the United Kingdom as may be prescribed;

and for that purpose may be called out once or oftener in every year.

Extension,
reduction,
or suspension
of
annual
training.

17. Her Majesty in Council may from time to time—

- (a) Order that the period of annual training in any year of all or any part of the militia be extended, but so that the whole period of annual training be not more than fifty-six days in any year; or
 - (b) Order that the period of annual training in any year of all or any part of the militia be reduced to such time as to Her Majesty may seem fit; or
 - (c) Order that in any year the annual training of all or any part of the militia be dispensed with;
- and every such order shall have full effect.

Embodiment.

Embodi-
ment of
militia.

18. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council

by proclamation (the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council, and notified by the proclamation, if Parliament be not sitting) to order the militia to be embodied.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the militia.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and where such directions for the time being direct the embodiment of any part of the militia, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be embodied; and such officers and men are in this Act referred to as embodied, or as the embodied part or parts of the militia.

19. Whenever Her Majesty orders the militia to be embodied, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

Assembly of Parliament when militia is ordered to be embodied.

20. (1.) It shall be lawful for Her Majesty by proclamation to order that the militia shall be disembodied, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

Disembodiment of militia.

(2.) Until any such proclamation of Her Majesty has been issued a Secretary of State may from time to time, as he may think expedient for the public service, give such directions as may seem necessary or proper for disembodiment of any embodied part of the militia and for embodying any part of the militia not embodied, whether previously disembodied or otherwise.

(3.) After the date fixed by the directions for the disembodiment of any part of the militia, the officers and men belonging to that part shall be in the position of militia officers and men not embodied.

Provisions common to Annual Training and Embodiment.

21. (1.) Where directions have been given for calling out for annual training or embodying any part of the militia, the commanding officer shall cause a notice to attend at the time and place fixed to be served on each militiaman required to attend.

Notice of times and places of attendance for annual training or

embodiment.

(2.) Such notice shall also be published in the prescribed manner in every parish in the county or area to which the corps of any such militiaman belongs.

(3.) The notices to be served and published under this section shall be served and published within such reasonable time before the time fixed for the attendance of the persons required to attend as may be prescribed.

General provision as to notices.

22. With respect to notices required in pursuance of this Act or of the orders and regulations in force under this Act to be given to militiamen, the following provisions shall have effect :—

(1.) Any such notice may be served on a militiaman, either by being sent by post to his usual place of abode or by being served in the prescribed manner ;

(2.) For the purpose of the service of any such notice the usual place of abode of a militiaman shall be that stated on his attestation or enrolment, or that subsequently notified by him in the prescribed manner ;

(3.) Evidence of the delivery at the usual place of abode of a militiaman of a notice, or of a letter addressed to such man, and containing a notice, shall be evidence that such notice was brought to the knowledge of such man ;

(4.) The publication of any such notice in the prescribed manner in every parish in the county or area to which a corps belongs, shall be sufficient notice to every militiaman in that corps to whom the notice applies, notwithstanding that a copy of such notice is not served upon him ;

(5.) Every constable and overseer of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Desertion and Fraudulent Enlistment.

Punishment for non-attendance for preliminary or annual training or embodiment, and for desertion or absence without leave.

23. (1.) Any militiaman who commits any of the following offences, that is to say :—

Without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in accordance with the orders and regulations under this Act, fails to appear at the time and place appointed, either for preliminary training, or for annual training, or for assembling on embodiment, shall—

(a) In the case of embodiment, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself

without leave within the meaning of section fifteen, of the Army Act, 1881 ; and

- (b) In any other case, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act, 1881.

(2.) A militiaman who commits an offence under this section, or under section twelve or section fifteen of the Army Act, 1881, whether otherwise subject to military law or not, shall be liable as follows ; that is to say —

- (a) Be liable to be tried by court martial, and convicted and punished accordingly ; or
- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for non-payment of the fine ;

and may in any case be taken into military custody.

24. (1.) Section one hundred and fifty-four of the Army Act, 1881, shall apply to a militiaman who is a deserter or absentee without leave within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

Supplemental provision as to deserters and absentees.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to be a deserter or absentee without leave from the militia, shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

25. (1.) Any person who by any means whatsoever—

- (a) Procures or persuades any militiaman to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any militiaman to commit such offence ; or

Punishment for inducing militiaman to desert or absent himself.

- (b) Knowing that a militiaman is about to commit the offence of absence without leave within the meaning of this Act, aids or assists him in so doing ; or

- (c) Knowing any militiaman to be an absentee without leave within the meaning of this Act, conceals such militiaman or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue ;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act, 1881, shall apply as if a militiaman were a soldier, and as if the word "desert," and other words referring to desertion, included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act, 1881; and any person who, knowing any militiaman to be a deserter within the meaning of this Act or of the Army Act, 1881, employs or continues to employ such militiaman, shall be deemed to aid him in concealing himself within the meaning of the said section.

Fraudulent
enlistment
or false
answer of
militia-
man.

26. (1.) If any person commits any of the following offences; that is to say:—

- (a) When belonging to the militia, without having fulfilled the conditions enabling him to enlist, enrol, or enter, enlists or enrolls in any of the auxiliary or reserve forces, or enters the Royal Navy; or
- (b) When belonging to the reserve forces, or to any of the auxiliary forces other than the militia, or to the Royal Navy, without having fulfilled the conditions enabling him to enlist or enrol, enlists or enrolls in the militia;

such person, if on service as part of the regular forces at the time when he commits the offence, shall be guilty of fraudulent enlistment, and in any other case shall be guilty of making a false answer; and for the purposes of this section a person shall be deemed to be on service as part of the regular forces if being a militiaman he is embodied, or if, when belonging to the reserve forces he is called out on permanent service, or if when belonging to the yeomanry or volunteers he is on actual military service.

(2.) A person who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say:—

- (a) Be liable to be tried by court-martial, and on conviction to suffer such imprisonment as is imposed, if the offence is fraudulent enlistment, by section thirteen, and if it is a false answer, by section thirty-three, of the Army Act, 1881; or
- (b) Be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than one month and not more than three months, or to a fine of not less than five pounds and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than

one month and not more than the maximum term allowed by law for non-payment of the fine, and in the case of a second or any subsequent conviction to be sentenced to imprisonment, with or without hard labour, for any term not less than two and not more than six months ;

and may in any case be taken into military custody.

(3.) A person who attempts to commit an offence under this section shall, whether otherwise subject to military law or not, be liable to be taken into military custody, tried, convicted, and punished in like manner in all respects as if he had committed an offence under this section, with this qualification, that if he is convicted by court-martial he shall not be liable to any punishment exceeding imprisonment, and if he is convicted by a court of summary jurisdiction this section shall apply as if the terms of imprisonment or amounts of fines were reduced by one-half.

27. Any militiaman who is delivered into military custody or committed as a deserter or absentee without leave by a court of summary jurisdiction, or is convicted by court-martial or by a court of summary jurisdiction of desertion or absence without leave or fraudulent enlistment under the Army Act, 1881, or this Act, or is dealt with summarily by his commanding officer for any such offence, shall, whether he is or is not punished for his offence, be liable to serve as follows (that is to say) :—

Liability of deserter, absentee, or fraudulent enlistee to further service.

- (a) If he has not completed the period of his preliminary training, he shall be liable to attend for preliminary training for the whole of the prescribed period or periods, or for the prescribed portion thereof, without any deduction being made for any time he has previously attended for such training ; and
- (b) If the duration of his absence from annual training has amounted in any year to the whole of the time of annual training, or to any part of that time not less than fourteen days he shall be liable to serve after the expiration of the term of his militia service for an additional year for each year in which he has been so absent ; and
- (c) If he was embodied either at the time when he committed the offence or afterwards, he shall be liable to serve for an additional period equal to the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender ; and the period of such additional service shall commence at the expiration of the term of his militia service or

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at the time of his apprehension or surrender, whichever last happens.

Record of
illegal
absence of
militia-
man.

28. (1.) Where a militiaman is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act, 1881, may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days.

(2.) Where a militiaman fails to appear at the time and place appointed for preliminary training or for annual training or for assembling on embodiment, and his absence continues for not less than fourteen days, his commanding officer shall make an entry in the regimental books of such absence, and such entry shall be conclusive evidence of the fact of such absence.

Lieutenants and Deputy Lieutenants of Counties.

Appoint-
ment of
lieutenants
of counties.

29. Her Majesty shall from time to time appoint lieutenants for the several counties in the United Kingdom.

Appoint-
ment, ap-
proval, and
removal of
deputy
lieutenants.

30. (1.) The lieutenant of every county shall from time to time appoint such persons as he thinks fit, living within the county, and qualified as provided by this Act, to be his deputy lieutenants.

(2.) In every county twenty persons at least, or if so many persons cannot be found duly qualified, then all the duly qualified persons living within the county, shall, subject as hereinafter mentioned, be appointed deputy lieutenants.

(3.) The lieutenants shall certify to Her Majesty the name of every person whom he proposes to appoint deputy lieutenant, and shall not grant a commission as deputy lieutenant to any person until informed by a Secretary of State that Her Majesty does not disapprove of the granting of such commission.

(4.) Whenever Her Majesty may think fit to signify her pleasure to the lieutenant of any county that all or any of the deputy lieutenants thereof be displaced, such lieutenant shall forthwith displace them, and appoint others in their stead, subject to the provisions of this Act; and a return of all persons by name who have been appointed deputy lieutenants or have been displaced shall be annually laid before Parliament, made up to the thirty-first day of December, within ten days after Parliament meets.

(5.) The commission of a deputy lieutenant shall not be vacated by the lieutenant who granted it ceasing to be lieutenant.

gazetting of commissions. tenancy of that county a specific description in writing, signed by himself, of his qualification, stating where the same consists wholly or partly of an estate in land or of heirship to an estate in land, the county and parish in which the land is situate.

(2.) The clerk of general meetings of lieutenancy shall send to the lieutenant of the county a copy of every such description delivered to him, and shall enter every such description on a roll to be kept for that purpose ; and shall (at the cost of the county rate) cause to be published in the London Gazette the names of the persons appointed deputy lieutenants, with the dates of their commissions, in like manner as commissions of officers of Her Majesty's land forces are published.

(3.) The clerk of general meetings of lieutenancy shall from time to time, when so required, send to a Secretary of State a complete account of the several descriptions of qualification delivered to him during the period mentioned in the requisition, and the Secretary of State shall cause copies of every such account to be laid before both Houses of Parliament.

Penalty for acting as deputy lieutenant without being qualified, &c.

35. (1.) If any person acts as deputy lieutenant without being duly qualified, or without having delivered the description of his qualification as required by this Act, he shall forfeit the sum of two hundred pounds ; but where such person has been appointed a deputy lieutenant all acts done by him in the execution of his office shall be as valid as if he had been duly qualified and had duly delivered such description.

(2.) In any legal proceeding for the recovery of any such penal sum the proof of qualification shall lie on the defendant.

Powers, &c., of lieutenants and deputy lieutenants.

36. Except as otherwise provided by this or any other Act, the lieutenant and deputy lieutenants appointed under this Act for any county shall respectively have such jurisdiction, duties, powers, and privileges as are vested in the lieutenant and deputy lieutenants respectively for such county under any Act of Parliament for the time being in force.

Quotas.

Quotas of militia.

37. (1.) It shall be lawful for Her Majesty in Council from time to time to appoint the quotas of militiamen to serve for the several counties of the United Kingdom.

(2.) Notice of the quota from time to time appointed for any county shall be transmitted to the lieutenant of that county and published in the London Gazette.

(3.) Such quota shall be the quota of the county until another quota is appointed and notified in like manner.

Civil Rights and Exemptions.

38. The acceptance of a commission as a militia officer shall not vacate the seat of any member returned to serve in Parliament.

Militia commissions not to vacate seats in Parliament.

39. A person in the militia shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

Attendance of voters at Parliamentary elections.

40. If a sheriff is a militia officer, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office, in the name of the high sheriff: and the security given by the under sheriff, and his pledges to the high sheriff, shall stand a security to the Queen, her heirs and successors, and to all persons whomsoever, for the due performance of the office of sheriff during such time.

Performance of duties of sheriff, if a militia officer, during embodiment.

41. A person in the militia shall not be compelled to serve as a peace officer or parish officer.

Exemption of militia-men.

Legal Proceedings.

42. (1.) Any offence which under the Militia Acts is punishable on conviction by court-martial shall, for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act, 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

Trial of offences and recovery and application of fines under Militia Acts.

(2.) Every fine or pecuniary forfeiture imposed under any of the Militia Acts, if exceeding the sum of twenty-five pounds, may be recovered by action in Her Majesty's High Court of Justice in England or Ireland, or in the Court of Session in Scotland; and if not exceeding such amount may, so far as the recovery thereof is not otherwise provided for, be recovered on conviction by a court of summary jurisdiction, in like manner as if it were a fine under this Act.

(3.) Any offence which under the Militia Acts is punishable on conviction by or before a court of summary jurisdiction within the meaning of this Act may be prosecuted, and any fine or pecuniary forfeiture which under the Militia Acts is recoverable for any such offence, or is otherwise recoverable before a court of summary jurisdiction, may be recovered in manner provided by sections one

hundred and sixty-six and one hundred and sixty-seven of the Army Act, 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to the Militia Acts, subject to the following modification, namely, every fine or pecuniary forfeiture imposed under any of the Militia Acts on a militiaman, or recovered on a prosecution instituted under any of the Militia Acts by or on behalf of the commanding officer of a militiaman (the application of which is not otherwise provided for by the said Acts), shall, notwithstanding anything in any Act or charter or in the said sections to the contrary, be paid to the commanding officer of the part of the militia to which the militiaman belongs, and shall be accounted for by him in the prescribed manner.

(4.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by any of the Militia Acts for the amount of any fine or forfeiture, or for the term of any imprisonment, shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything in any other Act contained, not be reduced by way of mitigation or otherwise.

Provisions
as to
offences
triable both
by court-
martial and
by court of
summary
jurisdiction;

43. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect :—

(1.) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act (a).

(2.) Proceedings against an alleged offender, when a militiaman, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted, whether the term of his militia service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to the commanding officer of the militiaman, if the militiaman is then apprehended, or if he is not then apprehended, then within two months after the time at which he is apprehended, whether such apprehension was by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.

(a) He is not to be tried by a court of summary jurisdiction without the written sanction of his commanding officer, or an authority superior to that officer.—Royal Warrant, 27th December, 1882.

(3.) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may, for the purposes of any proceedings against him, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as to the corps to which he properly belongs; and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act, 1881, or offences within the meaning of this Act, and to give evidence of such offences against him, and if he be convicted of more than one offence to punish him accordingly, as if he had been previously convicted of any such offence.

(4.) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

44. (1.) Section one hundred and sixty-four of the Army Act 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law), shall apply to a militiaman who is tried by a civil court, whether he is or is not at the time of such trial subject to military law. Evidence.

(2.) Section one hundred and sixty-three of the Army Act, 1881 (relating to evidence), shall apply to all proceedings under the Militia Acts.

Miscellaneous.

45. All returns required or authorized to be made in relation to the militia by any of the Militia Acts shall be made to such persons as may be prescribed. Militia returns, how to be made.

46. (1.) The law relating to the protection of justices of the peace in the execution of their office shall, save as regards limitation of actions, notice of action, venue, tender of amends and payment into court, and other matters relating to actions which are provided for by this section, apply to lieutenants and deputy lieutenants when acting in the execution of the Militia Acts, as if they were included in the expression "justices of the peace." Protection of persons acting under Militia Acts.

(2.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of the Militia Acts, or in respect of any alleged neglect or default in the execution of those Acts, shall not lie or be instituted unless it is commenced within twelve* months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within twelve* months next after the ceasing thereof.

(3.) In any such action, tender of amends before the action was commenced may, in lieu of or in addition to

* This period has been reduced to six months by the Public Authorities Protection Act, 1893 (56 and 57 Vict., c. 61).

any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(4.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom.

Exercise of
powers
vested in
holder of
military
office.

47. (1.) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may in relation to the militia be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

(2.) Where by any of the Militia Acts, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

Provisions as to special Localities.

Provisions
as to
counties for
purposes of
Militia
Acts.

48. For the purposes of the Militia Acts the following provisions shall have effect with respect to counties :—

(1.) The expression "county" shall, unless the context otherwise requires, mean a county at large, with the exception that each riding of the county of York shall be a separate county.

(2.) Each county of a city, county of a town, or place mentioned in the first column of the first schedule to this Act, shall be deemed to form part of the county set opposite thereto in the second column of that schedule, and where a parish is mentioned in that second column to form part of that parish.

(3.) All other places locally situate within a county as above defined shall be deemed to form part of that county.

(4.) Every place declared by this section to form part of a county shall (save as otherwise expressly provided) be subject to the jurisdiction and authority of the lieutenant, deputy lieutenants, and other officers of the said county.

49. The Militia Acts shall apply to the following places, with the modifications hereinafter mentioned :

Application
of Militia
Acts to cer-
tain places :
Isle of
Wight.

(1.) The Governor of the Isle of Wight may appoint to act for him in the island five or more deputies, in like manner and subject to the like conditions and restrictions as deputy lieutenants are appointed under this Act, and such deputies shall act in the execution of the Militia Acts as if they were deputy lieutenants ; the militia of the Isle of Wight shall be raised in the same manner as and shall form part of the militia of the county of Southampton ; but shall remain within the said isle as an internal defence thereof, unless Her Majesty otherwise orders.

(2.) The Militia Acts shall apply to the liberty or district of the Tower Division in the county of Middlesex, commonly known by the name of the Tower Hamlets, as if it were a separate county.

Tower
Hamlets.

(3.) This Act shall apply to the Cinque Ports, two ancient towns, and their members, so far as is consistent with the special enactments relating thereto, as if they were a separate county, and the Warden of the Cinque Ports were the lieutenant of that county.

Cinque
Ports.

(4.) It shall be lawful for Her Majesty to appoint a lieutenant for the county of the town of Haverfordwest in like manner as if it were a separate county, and he may appoint deputy lieutenants under this Act.

Haverford-
west.

(5.) A corps of miners may continue to be raised for the counties of Cornwall and Devon as part of the militia, and the Militia Acts shall apply in like manner as if such corps were the militia of a separate county, and the warden of the Stannaries were the lieutenant of that county, and the quota for such corps may be fixed accordingly. The deputies appointed by the warden shall be called deputy wardens of the Stannaries, and need not exceed twelve in number, and the persons appointed shall be qualified, in respect of residence and otherwise, as if they were appointed deputy lieutenants for a county comprising the counties of Cornwall and Devon, and any reference to the clerk of general meetings of lieutenancy shall be deemed to refer to the clerk of general meetings appointed by the warden.

Miners of
Cornwall
and Devon.

50. The city of London shall continue to be a separate county for the purposes of the militia, and so far as is consistent with the special enactments relating to such city this Act shall apply accordingly ; and the Commissioners of Lieutenancy of the city shall, for the purposes of this Act and those enactments, be the lieutenant of the county ; and the provisions of this Act with respect to deputy lieutenants shall not apply to the said city ; and nothing in this Act shall affect the raising and levying of the trophy tax as heretofore in the said city.

Application
of Act to
City of
London.

Definitions.

- Definitions.** 51. In this Act, unless the context otherwise requires,—
- The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State :
 - The expression "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed :
 - The expression "militia" means the regular militia raised in the United Kingdom, or in any county or part thereof :
 - The expressions "militiaman" and "man in the militia" include respectively a non-commissioned officer :
 - The expression "term of militia service" means in the case of a man enlisted or re-engaged under this Act the term for which he has so enlisted or re-engaged, and in case of any other man the term for which he is enrolled :
 - The expression "Militia Acts" means this Act, and any Act passed or hereafter to be passed relating to the militia, so far as it is for the time being in force :
 - The expression "prescribed" means prescribed by orders or regulations in force under this Act.
- Expressions not above in this section mentioned have, unless the context otherwise requires, the same meaning as they have in the Army Act, 1881.

Application of Act to Scotland.

- Modifications in application of Act to Scotland.** 52. In the application of this Act to Scotland the following modifications shall be made : that is to say :—
- (1.) The Militia Acts shall apply to the county of the city of Edinburgh in like manner as to any other county, and the chief magistrate of that city shall, when there is no lieutenant appointed, appoint the deputy lieutenants under this Act.
 - (2.) The expression "land" includes heritages.
 - (3.) The expression "county rate" means "county general assessment."
 - (4.) The expression "overseer" means "inspector of the poor."
 - (5.) In the provisions respecting an action, prosecution, or proceeding against any person, "plaintiff" shall mean "pursuer," and "defendant" shall mean "defender," and "solicitor" shall mean "law agent."

Application of Act to Ireland

- Modifications in** 53. In the application of this Act to Ireland, the following modifications shall be made ; that is to say :—

(1.) The Militia Acts shall apply to the counties of the cities of Dublin, Cork, and Limerick respectively in like manner as to any other county. application of Act to Ireland.

(2.) Lieutenants may be appointed for the county of the city of Waterford and the town and county of the town of Galway respectively in like manner as if such city and town were respectively separate counties, and such lieutenants may appoint deputy lieutenants under this Act.

(3.) As regards the qualifications of deputy lieutenants, the description shall state the denomination of any land forming the whole or part of the qualification, and in the case of any such city or town as above in this section mentioned, the town clerk shall be substituted for the clerk of general meetings of lieutenancy, and the borough rate shall be substituted for the county rate.

(4.) The powers vested in Her Majesty with reference to lieutenants and their deputy lieutenants and vice-lieutenants may, subject to any direction of Her Majesty, be exercised by the Lord Lieutenant of Ireland, and anything in relation to lieutenants or deputy lieutenants, if authorized or required to be done by, to, or before Her Majesty, may, subject as aforesaid, be done by, to, or before the Lord Lieutenant, and if authorized or required to be done by or to a Secretary of State, may be done by or to the Chief Secretary or Under Secretary of the Lord Lieutenant.

(5.) The number of deputy lieutenants in each county and in each such city or town as above mentioned shall be such as Her Majesty, or, subject to any direction of Her Majesty, the Lord Lieutenant from time to time determines.

(6.) Anything required to be published in the London Gazette shall be published in the Dublin Gazette in lieu of the London Gazette.

(7.) Except as otherwise provided by this or any other Act, the lieutenants and deputy lieutenants appointed under this Act for any county, city, or town shall respectively have all the powers which by any Act for the time being in force are vested in the governors or deputy governors respectively of counties or places in Ireland.

(8.) The expression "Lord Lieutenant" includes the Lords Justices or other Chief Governors or Governor of Ireland for the time being.

(9.) The expression "rate" includes "cess."

(10.) The constables shall perform the duties of overseers with respect to the publication of notices.

Repeal.

54. The Acts mentioned in the second schedule to this Act are hereby repealed as from the commencement of Repeal of Acts.

this Act to the extent in the third column of that schedule specified ;

Provided as follows :—

(1.) So much of the said Acts as is set out in the third schedule to this Act shall continue in force in manner therein appearing, as if the same were enacted in the body of this Act.

(2.) Such repeal shall not revive any enactment, and shall not, save as herein otherwise provided, affect anything previously done or suffered, or any existing right or title, or any remedy in respect thereof, or the proof of any past Act.

(3.) All commissions and appointments in relation to the militia which exist at the commencement of this Act shall be of the same effect as if granted or made under this Act.

(4.) All orders, warrants, regulations, and directions in relation to the militia which exist at the commencement of this Act shall be of the same effect as if they were orders and regulations made under this Act, and may be revoked or altered accordingly.

(5.) The quota in force at the commencement of this Act for any county, or for any place which is under this Act deemed to be a county, shall continue to be the quota appointed for that county or place until another quota is appointed under this Act.

(6.) The several militiamen who before the commencement of this Act have been attested for service, whether before a justice of the peace or an officer, or have been re-engaged, shall be deemed to have been duly attested and re-engaged as if they had been enlisted or re-engaged under this Act, and shall continue to serve accordingly, and shall be subject to and be deemed to be raised under this Act, and their service before the commencement of this Act shall be reckoned as if the same had taken place under this Act.

(7.) A member of the permanent staff of the militia who has been enlisted or re-engaged in pursuance of any enactment hereby repealed shall continue to serve in like manner as if the said enactment had not been repealed.

(8.) Where a member of the permanent staff of the militia or a militiaman was enlisted or re-engaged before the passing of the Regulation of the Forces Act, 1881, or before the date of any order or regulation made under the said Act, nothing in the said Act, order, or regulation, or in this Act shall render such member or man liable without his consent to serve in or be appointed, transferred, posted, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached if the Regulation

of the Forces Act, 1881, or this Act, or the said order or regulation as the case may be, had not been passed or made.

(9.) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may be carried on and completed, and the offender may be tried and punished, as if this Act had not passed; but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act (including the dealing with the case by the commanding officer), so, however, that a person shall not be subject for any such offence to any greater punishment than that to which he was subject before the commencement of this Act, nor to any punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

(10.) Any unrepealed enactment referring to any provisions hereby repealed, or to any provisions repealed by the Militia (Voluntary Enlistment) Act, 1875, shall be construed as referring to the corresponding provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

The following places are for to be included in the
the purposes of the Militia following counties.
Acts

England.

| | | |
|---|-----------------|--|
| County of the city of Chester | Chester. | Sec 12 Geo. 3, c. 90, ss. 19, 149, 151, 35 & 39 Vict. c. 69, ss. 2, 80. |
| County of the city of Exeter | Devon. | |
| County of the town of Poole | Dorset. | |
| County of the city of Gloucester.... | Gloucester. | |
| County of the city of Bristol | Gloucester. | |
| County of the city of Canterbury.... | Kent. | |
| County of the city of Lincoln | Lincoln. | |
| County of the city of Norwich | Norfolk. | |
| County of the town of Newcastle-upon-Tyne.... | Northumberland. | |
| Borough and town of Berwick-upon-Tweed.... | Northumberland. | |
| County of the town of Nottingham.... | Nottingham. | |

| | | |
|--|------|---------------------------------|
| County of the town of Southampton | .... | Southampton. |
| County of the city of Lichfield | .... | Stafford. |
| County of the city of Worcester | .... | Worcester. |
| County of the city of York | .... | West Riding of York. |
| County of the town of Kingston-upon-Hull | .... | East Riding of York. |
| County of the town of Carmarthen | .... | Carmarthen. |
| County of the town of Haverfordwest | .... | Pembroke. |
| The constabulary of Craike | .... | North Riding of York. |
| That part of the parish of Maker which lies in the county of Cornwall | .... | Cornwall. |
| Town and parish of Wokingham | .... | Berks. |
| The township of Filey | .... | East Riding of York. |
| Threapwood | .... | Parish of Worthenbury in Flint. |
| Parish of Saint Martin, called Stamford Baron, in the suburbs of the borough and town of Stamford on the south side of the waters called Welland | .... | Lincoln. |

Ireland.

| | | |
|-----------------------------------|------|--------------|
| County of the city of Waterford | .... | Waterford. |
| County of the city of Kilkenny | .... | Kilkenny. |
| County of the town of Drogheda | .... | Louth. |
| County of the town of Londonderry | .... | Londonderry. |
| County of the town of Galway | .... | Galway. |

SECOND SCHEDULE.

Acts Repealed.

A description or citation of a portion of an Act is inclusive of the word, section, or other part, first or last mentioned, or otherwise referred to as forming the

beginning, or as forming the end, of the portion comprised in the description or citation.

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|----------------------|---|---|
| 37 Geo. 3, c. 25 ... | An Act for the better raising and ordering the militia forces of the Tower Hamlets in the county of Middlesex. | Section three, from "and also such" to "the said Hamlets," and sections thirteen, fourteen, and sixteen to eighteen. |
| 42 Geo. 3, c. 72 ... | An Act for repealing an Act made in the thirty-eighth year of the reign of His present Majesty, intituled "An Act for raising a body of miners in the counties of Cornwall and Devon for the defence of the Kingdom during the present war;" and for the more effectually raising and regulating a body of miners for the defence of Great Britain. | Section one, from "and the said wardens shall constitute" to "are entitled to rank," sections two, three, and thirty-one, section thirty-three, from "and that all fines" to the end of the section, and sections thirty-four and thirty-five. |
| 42 Geo. 3, c. 90 ... | An Act for amending the laws relating to the militia in England, and for augmenting the militia. | Section one hundred and forty-eight, section one hundred and forty-nine, the words "and officers," and from "and such number of officers" to the end of the section, section one hundred and fifty, from "shall appoint" to "and shall and," and from "and shall appoint five" to the end of the section, and sections one hundred and fifty-one, one hundred and fifty-two, one hundred and seventy-one, one hundred and seventy-seven, and one hundred and seventy-eight. |
| 42 Geo. 3, c. 91 ... | An Act to raise and establish a militia force in Scotland. | Sections fifteen, thirty-two, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and sixty-six, one hundred and seventy-three, and one hundred and seventy-four. |
| 43 Geo. 3, c. 50 ... | An Act for more speedily completing the militia of Great Britain, raised under two Acts passed in the forty-second year of the reign of His present Majesty; and for amending the said Acts. | Section five, section six, from "either for the purpose" to "for that purpose or," and section eight. |

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|-----------------------|--|---|
| 49 Geo. 3, c. 120 ... | An Act for amending and reducing into one Act of Parliament the several laws for raising and training the militia of Ireland. | Sections two, three, five, six, section one hundred and eighteen, from "every such person" to "by virtue of this Act, and," and sections one hundred and thirty to one hundred and thirty-eight, section one hundred and forty-one, from "or within four months" to "enrolling volunteers," and sections one hundred and forty-five to one hundred and forty-seven. |
| 51 Geo. 3, c. 114 ... | An Act to permit the services of the regiment of miners of Cornwall and Devon to be extended, to Ireland. | The whole Act, so far as unrepealed. |
| 51 Geo. 3, c. 118 ... | An Act to permit the interchange of the British and Irish militias respectively. | The whole Act, so far as unrepealed. |
| 52 Geo. 3, c. 29 ... | An Act to amend the laws relating to the militia of Ireland. | The whole Act, so far as unrepealed. |
| 53 Geo. 3, c. 48 ... | An Act to amend the laws for raising and training the militia of Ireland. | Sections three to five. |
| 53 Geo. 3, c. 132 ... | An Act to extend the services of the militia of the Tower Hamlets to all parts of the United Kingdom. | The whole Act, so far as unrepealed. |
| 55 Geo. 3, c. 65 ... | An Act to amend the laws relating to the militia of Great Britain. | The whole Act, so far as unrepealed, except section eight. |
| 1 Geo. 4, c. 100 ... | An Act for amending and reducing into one Act of Parliament two several Acts, passed in the thirty-sixth and thirty-ninth years of the reign of His late Majesty King George the Third, for the better ordering and further regulating of the militia of the City of London. | Sections two, four, five, and seven, section nine, as to the form of oath thereby prescribed, sections nineteen to twenty-one, twenty-three to twenty-six, and twenty-nine, section forty-two, from "provided always" to the end of the section, sections forty-six and forty-seven, section forty-eight, from "provided always" to the end of the section, and section forty-nine. |
| 15 & 16 Vict., c. 50 | An Act to consolidate and amend the laws in relation to the militia in England. | Sections eight and nine, section twenty-four, the words "as hereinbefore directed," section thirty, section thirty-one, section thirty-five, section thirty-six, from "but the number" to the end of the sec- |

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|-----------------------|--|--|
| 17 & 18 Vict., c. 105 | The Militia Law Amendment Act, 1854. | tion, and section thirty-eight, from "in apportioning" down to "but so that," and from "and the oath to be taken," down to "sovereign for the time being." |
| 23 & 24 Vict., c. 94 | An Act to amend the laws relating to the militia. | Section fifty-two. |
| 23 & 24 Vict., c. 120 | An Act to amend the laws relating to the ballots for the militia in England, and to suspend the making of lists and ballots for the militia of the United Kingdom. | Sections ten to twelve, section twenty, and section twenty-one. |
| 28 & 29 Vict., c. 46 | An Act to suspend the making of lifts and the ballots for the militia of the United Kingdom. | Section nineteen. |
| 32 & 33 Vict., c. 66 | An Act to continue and amend an Act to defray the charge of the pay, clothing, and contingent and other expenses of the disembodied militia in Great Britain and Ireland; to grant allowances in certain cases to subaltern officers, adjutants, paymasters, quartermasters, surgeons, assistant surgeons, and surgeons' mates of the militia; and to authorize the employment of the non-commissioned officers. | Section four, from "or of any meeting" to the end of the section. |
| 33 & 34 Vict., c. 67 | The Army Enlistment Act, 1870. | The whole Act. |
| 34 & 35 Vict., c. 86 | The Regulation of the Forces Act, 1871. | Section twenty, so far as it relates to the militia |
| | | Section six, from "saving nevertheless to the lieutenants of counties," down to "proceedings incidental thereto," and so much of the rest of the section as relates to the militia; so much of section seven as relates to the militia; sections eight and fourteen; the words "militia or" wherever they occur in section seventeen, section eighteen, and the definition of "militia" in section nineteen. |

| Session and Chapter. | Title or Short Title. | Extent of Repeal. |
|----------------------|--|--|
| 36 & 37 Vict., c. 84 | An Act to explain the Militia Pay Acts, 1868 and 1869, and to facilitate the sale of property held for militia purposes. | Section one. |
| 37 & 38 Vict., c. 29 | The Militia Law Amendment Act, 1874. | The whole Act. |
| 38 & 39 Vict., c. 69 | The Militia (Voluntary Enlistment) Act, 1875. | The whole Act. |
| 41 & 42 Vict., c. 10 | An Act for punishing mutiny and desertion, and for the better payment of the army and their quarters. | Sections forty-four, fifty-seven, fifty-eight, and eighty, and the schedule. |
| 42 & 43 Vict., c. 32 | The Army Discipline and Regulation (Commencement) Act, 1879. | Section five, from "as respects" to "and also," and so much of the rest of the section as keeps in force any portion of the Army Mutiny Act relating to the militia. |
| 44 & 45 Vict., c. 57 | The Regulation of the Forces Act, 1881. | Section two, from "the expression militia" to "non-commissioned officer," sections three to eight, and so much of sections thirty-eight, thirty-nine, and fifty-three as relates to the militia. |

THIRD SCHEDULE.

Local Militia.

Enactments re-enacted with respect to Local Militia.

33 & 34 Vict. c. 67, s. 20.

Service of notices on local militia.

A Secretary of State may require the chief officer of police in every district in the United Kingdom to cause to be served within his district any notice which the Secretary of State may desire to be served on any member of the local militia in such district; and all officers and men of every police force shall conform to the orders of a Secretary of State in relation to the service of such notices given through such chief officer.

34 & 35 Vict. c. 86, s. 6.

Jurisdiction of Her Majesty in relation to the local militia.

(1.) All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the local militia, or any part thereof, which under any Acts, other than this Act, are vested in or exercisable by the lieutenants of

counties, shall be exercisable by Her Majesty through a Secretary of State, or any officers to whom Her Majesty may, by and with the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving nevertheless to the lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the local militia by ballot, and the proceedings incidental thereto.

(2.) All officers in the local militia shall be appointed by and hold commissions from Her Majesty; such commissions shall be prepared, authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued, according to any law or custom for the time being in force.

(3.) First appointments to the lowest rank of officer in any corps of local militia shall be given to persons recommended by the lieutenant of the county to which the corps belongs, if a person approved by Her Majesty is recommended by such lieutenant for any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant by a Secretary of State, which notice may be given by a letter addressed to him by post.

34 & 35 Vict. c. 86, s. 7.

The local militia shall consist of such number of men as may from time to time be provided by Parliament.

Number of
local
militia.

34 & 35 Vict. c. 86, s. 8.

Men enrolled in the local militia shall attend at the headquarters of the corps in which they are enrolled, or at such other place and at such times as may be directed by a Secretary of State, for preliminary instruction for a period of not more than six months.

Training
for militia.

34 & 35 Vic. c. 86, s. 14.

All returns required or authorized to be made in relation to the local militia by any Act for the time being in force shall be made to such persons as may be prescribed by a Secretary of State.

Returns in
relation to
the local
militia.

34 & 35 Vict. c. 86, s. 19.

In this schedule, if not inconsistent with the context,—
The expression “a Secretary of State” means “one of Her Majesty's Principal Secretaries of State;”

The expression “lieutenant of a county,” includes a vice
(M.L.)

lieutenant, also the Governor of the Isle of Wight, the Warden of the Cinque Ports, the Warden of the Stannaries, the Constable of the Tower, and any other officer or officers however named having a jurisdiction in relation to the local militia similar to that of lieutenant, or lieutenants, or deputy lieutenants of a county.

Regimental Debts Act, 1893.

[56 Vict., c. 5.]

ARRANGEMENT OF SECTIONS.

Collection of Effects and Payment of Preferential Charges.

Section.

1. On death of person subject to military law, committee of adjustment to secure effects and pay charges.
2. Preferential charges.
3. Surplus only of personal estate to be deemed personal estate.
4. Decision of questions as to preferential charges.
5. Payment of preferential charges by representatives or other persons.
6. Powers and duties of committee where preferential charges are not paid.

Disposal of Surplus and Residue.

7. Disposal of surplus by paymaster.
8. Disposal of residue by Secretary of State.
9. Disposal by Secretary of State of residue where residue does not exceed one hundred pounds, and no representation.
10. Application of residue undisposed of.

Supplemental Provisions.

11. Disposal of medals and decorations.
12. Disposal of effects not money.
13. Regulations by royal warrant.
14. Restriction on interposition of official administrators.
15. Money remitted not to be assets in place where remitted to.
16. Duty and representation where sums under one hundred pounds.
17. Discharge of paymaster and Secretary of State.

Section.

18. Validity of payments, sales, &c., under this Act.
19. Saving for rights of representative.
20. Creditor administering not entitled to claim property.
21. Deposit in Court of Probate, &c., of original wills in hands of Secretary of State, and declaration of intestacy.

Application of Acts to special Cases.

22. Special provision as to army paymaster.
23. Application of Act to deserters, felons, &c.
24. Application of Act to case of insanity.

Application of Act to India.

25. General application of Act to India.
26. Provision where death occurs in India, the deceased not being a soldier.
27. Deduction of arrears of subscription to military and orphan funds.
28. Provision as to Secretary of State for India.

Definitions; Extent; Commencement; Repeal; Short Title.

29. Definitions.
30. Extent of Act.
31. Commencement of Act.
32. Repeal of 26 & 27 Vict., c. 57, and 44 & 45 Vict., c. 57, s. 51.
33. Short title.

An Act to consolidate and amend the Law relating to the Payment of Regimental Debts, and the Collection and Disposal of the Effects of Officers and Soldiers in case of Death, Desertion, Insanity, and other cases.

[29th April, 1893.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Collection of Effects and Payment of Preferential Charges.

1. On the death of a person while subject to military law the prescribed committee of adjustment shall, as soon

On death of person sub-
j

ject to military law, committee of adjustment to secure effects and pay charges. as may be, in accordance with the prescribed regulations and subject to any exceptions made thereby,

- (1.) Secure and make an inventory of all such of the effects of the deceased as are in camp or quarters, and, if the death occurs out of the United Kingdom, are within the prescribed area whether station, colony, or command, or other (which area is in this Act referred to as the regulation area); and
- (2.) Ascertain the amount and provide for the payment of the preferential charges on the property of the deceased.

Preferential charges. 2. The following shall be the preferential charges on the property of a person dying while subject to military law, and shall, except so far as other provision may be made for them or any of them, be payable in preference to all other debts and liabilities, and, as among themselves, in the following order :—

- (1.) Expenses of last illness and funeral ;
- (2.) Military debts, namely, sums due in respect of, or of any advance in respect of—
 - (a) Quarters ;
 - (b) Mess, band, and other regimental accounts ;
 - (c) Military clothing, appointments, and equipments, not exceeding a sum equal to six months' pay of the deceased, and having become due within eighteen months before his death ;

to which shall be added, where the death occurs out of the United Kingdom—

- (3.) Servants' wages, not exceeding two months' wages to each servant ; and
- (4.) Household expenses incurred within a month before the death, or after the last issue of pay to the deceased, whichever is the shorter period.

Surplus only of personal estate to be deemed personal estate. 3. So much only of the personal property of a person dying while subject to military law as remains after payment of the preferential charges shall be considered personal estate of the deceased with reference to the calculation of probate duty, or of any other duty, tax, or percentage, or for any of the purposes of administration.

Decision of questions as to preferential charges. 4. If in any case a doubt or difference arises in relation to any preferential charge or the payment thereof, the decision of the Secretary of State, or of such officer or person as the Secretary of State deputes by writing to

act in this behalf, shall be final, and shall be binding on all persons for all purposes.

5. Subject to the prescribed regulations, if any person pays or secures the payment of the preferential charges in full, the committee of adjustment shall not further interfere in relation to the property, except so far as they may be requested so to do by or on behalf of that person.

Payment of preferential charges by representatives or other persons.

6. (1.) If within one month after the death or such further time not exceeding the prescribed time as the committee of adjustment allow, the preferential charges are not paid or secured to their satisfaction, the committee shall proceed to pay those charges.

Powers and duties of committee where preferential charges are not paid.

(2.) If the death occurs out of the United Kingdom, the committee of adjustment, save as may be prescribed, shall, if it appears to them necessary for the payment of the preferential charges, and in any case may, collect all the personal property of the deceased in the regulation area.

(3.) The committee, save as may be prescribed, shall, for the purpose of paying the preferential charges and their expenses, and in any case may, at such time as, subject to the prescribed regulations, they think expedient, sell and convert into money such of the personal property of the deceased as does not consist of money.

(4.) If the death occurs out of the United Kingdom they may also, save as otherwise prescribed, pay all debts, which appear to them to be legally payable, out of the personal estate of the deceased.

(5.) For the purpose of the exercise of their duties the committee shall, to the exclusion of all authorities and persons whomsoever, have the same rights and powers as if they had taken out representation to the deceased, and also if in a colony the powers which any official administrator has by the law of that colony; and any receipt given by the committee shall have the like effect as if it had been given by the legal personal representative of the deceased.

(6.) The committee of adjustment shall lodge the surplus remaining in their hands after payment of the said charges and expenses and debts with such person (in this Act referred to as the paymaster), at such times, in such manner, and together with such inventory, accounts, vouchers, and information as may be prescribed.

Disposal of Surplus and Residue.

7. The paymaster shall pay the surplus in the prescribed manner, and subject to the prescribed provisions and exceptions, as follows :—

Disposal of surplus by paymaster

- (1.) If out of the United Kingdom he may pay thereout any expenses which under the prescribed regulations are chargeable against the surplus, and any debts which are legally payable out of the personal estate of the deceased ;
- (2.) If he knows of a representative of the deceased in the same part of Her Majesty's dominions, he shall pay the surplus to that representative ;
- (3.) If he does not know of such a representative as above mentioned, and the amount does not exceed one hundred pounds, he may pay or apply all or any part thereof to or for the benefit of such persons in the same part of Her Majesty's dominions as he knows of and appear to be beneficially entitled to the personal estate of the deceased, or to or for the benefit of any of such persons ;
- (4.) He shall remit the surplus or so much thereof as is not paid or applied in pursuance of this section to the Secretary of State.

Disposal of
residue by
Secretary of
State.

8. The Secretary of State, on being informed of the death of a person subject to military law, shall proceed with all reasonable speed as follows :—

- (1.) He shall cause to be ascertained the total amount to the credit of the deceased, including any surplus or part of a surplus remitted by a paymaster as mentioned in this Act, and all arrears of pay, batta, grants, and other allowances in the nature thereof ; which total amount so ascertained is in this Act referred to as the residue ;
- (2.) If he has notice of a representative of the deceased, he shall pay the residue to that representative ;
- (3.) He may, and if it is so prescribed shall, before such payment, publish the prescribed notice stating the amount of the residue and such other particulars respecting the deceased and his property as may seem fit, and also the mode in which any application respecting the residue is to be made to the Secretary of State. Provided that the Secretary of State may pay out of any money in his hands to the credit of the deceased any preferential charges appearing to him to have been left unpaid by the committee of adjustment.

Disposal by
Secretary of
State of
residue
where
residue does
not exceed

9. Where the residue does not exceed one hundred pounds, the Secretary of State may, if he thinks fit, require representation to be taken out ; but if he does not, and has no notice of a representative of the deceased, then, after the expiration of the prescribed time and the

publication of the prescribed notice (if any), the residue shall be disposed of as follows :—

- (1.) The Secretary of State may, if he thinks fit, pay or apply the residue or any part thereof, in accordance with the prescribed regulations to or for the benefit of any of the persons appearing to be beneficially entitled to the personal estate of the deceased, or any of them, and may for that purpose invest the same by deposit in a military or other savings bank, or otherwise, and, if necessary, in the name or names of a trustee or trustees for any such person.

one hundred pounds, and no representation.

- (2.) Any part thereof remaining in the hands of the Secretary of State, and not irrevocably appropriated, shall be applied in paying any debt of the deceased which—

- (a) accrued within three years before the death; and
- (b) is claimed from the Secretary of State within two years after the death; and
- (c) is proved by the claimant to the satisfaction of the Secretary of State.

- (3.) Except as above in this section provided, a person shall not be entitled to obtain payment out of any residue in the hands of the Secretary of State of any sum due from the deceased.

10. (1.) Where any residue or any part thereof remains undisposed of and unappropriated, the prescribed notice thereof shall be published, and during six years next after the publication of that notice the like notice with any necessary modifications shall be annually published.

Application of residue undisposed of.

(2.) So much of the residue as remains undisposed of and unappropriated for six months after the publication of the last of such notices shall, together with any income or accumulations of income accrued therefrom, be applied in the prescribed manner in or towards the creation or maintenance of such compassionate or other fund for the benefit of widows and children, or other near relatives, of soldiers dying on service, or within six months after discharge, as may be prescribed.

(3.) Provided that the application under this section of any residue, or part of a residue, shall not bar any claim of any person to the same, or any part thereof.

Supplemental Provisions.

11. Medals and decorations shall not be considered to be comprised in the personal estate of the deceased with

Disposal of medals and decorations.

reference to the claims of creditors or for any of the purposes of administration under this Act or otherwise ; and, notwithstanding anything in this or any other Act, the same, when secured by the committee of adjustment, shall be held and disposed of according to regulations laid down by royal warrant.

Disposal of effects not money.

12. Where any part of the personal estate of the deceased consists of effects, securities, or other property not converted into money, the provisions of this Act with respect to paying or remitting the surplus shall, save as may be prescribed, extend to the delivery, transmission, or transfer of such effects, securities, or property, and the paymaster and Secretary of State shall respectively have the same power of converting the same into money as the representative of the deceased.

Regulations by royal warrant.

13. (1.) Her Majesty the Queen may, by warrant under the Royal Sign Manual, make regulations for all such things as are by this Act directed or authorised to be prescribed or made subject to regulations, and also such regulations as may seem fit for the better execution of this Act, or any part thereof ; and may by such regulations make different provisions to meet different cases or different circumstances.

(2.) Every royal warrant made under this Act shall be printed by the Queen's printer, and published under the authority of Her Majesty's Stationery Office, and laid before both Houses of Parliament as soon as may be after the making thereof.

Restriction on interposition of official administrators.

14. (1.) An official administrator, notwithstanding any law regulating his office independently of this Act, shall not interpose in any manner in relation to any property of a person dying while subject to military law, except in the prescribed cases, or except when and so far as he is expressly required to do so by a committee of adjustment, or paymaster, or Secretary of State.

(2.) The committee of adjustment in such cases, under such circumstances, and at such times as may be prescribed, may request an official administrator, to exercise his official powers either on behalf of the committee or otherwise, and the administrator shall comply with the request. The committee may also lodge any property secured or collected by them with any official administrator.

(3.) Where under this Act any property comes to the hands of any official administrator, he shall administer the same as regards preferential charges and otherwise in accordance with this Act, and, subject thereto, according to the law regulating his office independently of this Act.

(4.) The official administrator shall remit any surplus

remaining in his hands after discharge of all debts and his charges to the Secretary of State at such time and in such manner as may be prescribed, to be disposed of according to the provisions of this Act as if remitted by a paymaster.

(5.) An official administrator shall not take a percentage on the property exceeding 3 per cent. on the gross amount coming to or remaining in his hands after payment of preferential charges.

15. Any property coming under this Act to the hands of any committee of adjustment or paymaster shall not, by reason of so coming, be deemed assets or effects at the place in which that committee or paymaster is stationed or resides, and it shall not be necessary by reason thereof that representation be taken out in respect of that property for that place.

Money remitted not to be assets in place where remitted to.

16. Where any surplus or residue, as the case may be, does not exceed one hundred pounds, no duty shall be payable in the United Kingdom or India in respect thereof, and it shall not be necessary that representation to any deceased person be taken out for the purpose of obtaining payment thereof or of any part thereof under this Act from a paymaster or a Secretary of State, except in any prescribed case, or in any case where the Secretary of State requires it.

Duty and representation where sums under one hundred pounds.

17. Compliance with the regulations under this Act with respect to the mode of payment of any surplus or residue or any part thereof to any person (whether by transmission or remission to another place or person or otherwise) shall discharge the Secretary of State or paymaster or other person complying with the regulations, and he shall not be liable by reason of the surplus or residue or part which may be in his hands having been paid, transmitted, remitted, or otherwise dealt with in accordance with the regulations.

Discharge of paymaster and Secretary of State.

18. Every payment, application, sale, or other disposition of property made by the Secretary of State, or by any committee of adjustment, or by any paymaster, when acting in execution or supposed execution of this Act, or of any royal warrant for carrying this Act into effect, shall be valid as against all persons whomsoever; and the Secretary of State, and every officer belonging to any such committee, and every such paymaster as aforesaid shall, by virtue of this Act, be absolutely discharged from all liability in respect of the property so paid, applied, sold, or disposed of.

Validity of payments, sales, &c., under this Act.

19. After the committee of adjustment have lodged with the paymaster the surplus of the property of any deceased person, any representative of that person and

Saving for rights of representative.

any official administrator shall, as regards any property of a deceased person not collected by the committee of adjustment and not forming part of the surplus or residue in this Act mentioned, have the same rights and duties as if this Act had not passed.

Creditor administering not entitled to claim property.

20. A creditor, as such, shall not be deemed a person entitled to take out representation to the deceased within the meaning of this Act or to pay or secure the preferential charges; nor shall a creditor taking out representation be entitled as representative of the deceased to claim from a paymaster or the Secretary of State any part of the property of the deceased.

Deposit in court of probate, &c., of original wills in hands of Secretary of State, and declaration of intestacy.

21. (1.) Where any original will of a person dying while subject to military law, whether he died before or after the commencement of this Act, comes to the hands of a Secretary of State, and representation under the same is not taken out, then the Secretary of State may cause the same to be deposited as follows:—

- (a) Where the domicile of the testator appears to the Secretary of State to have been in Scotland, then in the office of the commissary clerk of the commissary court of the county of Edinburgh:
- (b) Where the domicile of the testator appears to the Secretary of State to have been in Ireland, then in the place for the time being appointed in Dublin for the deposit of original wills brought into the High Court in Ireland:
- (c) In any other case, in the place for the time being appointed in London for the deposit of original wills brought into the High Court in England.

(2.) Where a person dies while subject to military law intestate, and under this Act any residue of his property comes to the hands of the Secretary of State, and representation to the deceased is not taken out, then the Secretary of State may, if it seems fit, cause a declaration of his intestacy to be deposited in the place or office where his original will (if any) would be deposited as aforesaid.

(3.) In every such case the Secretary of State may cause to be deposited, together with the original will or declaration of intestacy, an inventory showing the personal property of the deceased, and the application thereof, as far as the same is known.

(4.) Every such original will, declaration of intestacy, and inventory shall be preserved and dealt with, and may be inspected, subject and according to the same rules or orders and on payment of the same fees as any other like documents deposited in that office or place, or subject and according to such other rules or orders and on payment of

such other fees, as may be made or fixed in that behalf by the court, judge, or other authority empowered to make rules or orders in relation to other documents deposited in the same place or office.

Application of Act to special Cases.

22. In the application of this Act to an army paymaster, the following modifications shall be made :—

Special provision as to an army paymaster.

- (1.) The powers and duties of the committee of adjustment shall arise immediately on his death, and shall continue notwithstanding that the professional charges are paid or secured :
- (2.) Money in the possession or under the control of an army paymaster at his death shall not be considered to be comprised in his effects for the purposes of this Act :
- (3.) The surplus in the hands of the committee of adjustment and the residue in the hands of a Secretary of State shall be dealt with and disposed of as may be prescribed and not according to the foregoing provisions of this Act.

23. Where a person subject to military law deserts, or is absent without leave for twenty-one days, or is convicted by a civil court of any offence which by the law of England is felony, or is delivered up as an apprentice, whether in pursuance of an order of a court, or otherwise, the provisions of this Act shall apply as if the person were dead, subject to the following modifications ;

Application of Act to deserters, felons, &c.

- (1.) The powers of the committee of adjustment shall arise and continue notwithstanding that the preferential charges are paid or secured :
- (2.) The committee of adjustment shall dispose of the surplus in the prescribed manner, and the same when so disposed of shall be free from all claim on the part of the said person or any one claiming through him.

24. Where a person subject to military law is ascertained in the prescribed manner to be insane, the provisions of this Act shall apply as if he had died at the time of his insanity being so ascertained, subject nevertheless to the prescribed exceptions, and to the following modifications :

Application of Act to case of insanity.

- (a) The preferential charges may be paid by the wife of the insane person, or by any person who, subject to the prescribed regulations, appears to be a relative of or person undertaking the care of the insane person or of his property ;

- (b) The committee of adjustment shall dispose of the surplus in the prescribed manner with a view to its being applied for the benefit of the insane person.

Application of Act to India.

General application of Act to India.

25. This Act shall apply to India as if it were a colony, subject to the modifications in this Act mentioned, and to this exception, that it shall not, save so far as may be prescribed, apply to any native of India within the meaning of Indian military law.

Provision where death occurs in India, the deceased not being a soldier.

26. In the case of the death of a person who dies while in India or while on service with any force under the command of the commander-in-chief in India, or of any provincial commander-in-chief in India, and who is not a soldier of Her Majesty's regular forces, this Act shall apply with the following modifications :

- (1.) The paymaster shall after the prescribed notice pay all debts of which he has notice within the prescribed time, and which appear to him to be lawfully payable out of the estate of the deceased. Provided that if under the special circumstances of the case of the deceased it appears to the paymaster inexpedient or unjust to pay any claims out of the estate, or if the claims lodged exceed in the whole the prescribed amount, the paymaster shall, without discharging those claims, or any of them, transfer the surplus aforesaid to the official administrator :
- (2.) Where the paymaster does not so transfer the surplus, he shall dispose thereof, or of so much thereof as remains after the discharge of any claims, in manner directed by this Act :
- (3.) The foregoing provisions of this section shall not apply to an army paymaster :
- (4.) The secretary to the Government of India in the military department shall have the same power as the Secretary of State to decide any doubt or difference as to preferential charges, and his decision shall have the same effect as if it were given by the Secretary of State.

Deduction of arrears of subscription to military and orphan funds.

27. Nothing in this Act shall prevent the Secretary of State from deducting in the pay office from any arrears of pay due to the deceased the amount of any arrears of subscription due by the deceased to the Indian military and orphan funds, or either of them.

Provision as to Secretary

28. Anything authorized or required by this Act to be done by, to, or before a Secretary of State may, in the

prescribed cases, be done by, to, or before the Secretary of State for India.

Definitions ; Extent ; Commencement ; Repeal ; Short Title.

29. In this Act, unless the context otherwise requires,— **Definitions.**

The expression “officer” includes a warrant officer, although not holding an honorary commission :

The expression “representation” includes probate and letters of administration, with or without will annexed, and in Scotland confirmation, and in India or a colony the corresponding documents in use according to the law of India or the colony :

The expression “representative” means any person taking out representation, but does not include an official administrator :

The expression “official administrator” means in India the administrator-general of any presidency or province, and in a colony means any public officer who has by law any powers or duties in relation to the collection or distribution of the estate of any deceased person :

The expression “prescribed” means prescribed by Royal Warrant.

Save as aforesaid expressions in this Act have the same meaning as in the Army Act.

30. (1.) This Act shall apply to all persons subject to military law, whether within or without Her Majesty’s dominions. **Extent of Act.**

(2.) This Act shall be registered by the Royal Courts of the Channel Islands, and shall apply to those Islands and to the Isle of Man as if they were parts of the United Kingdom.

(3.) This Act shall apply to a place in which Her Majesty exercises jurisdiction under the Foreign Jurisdiction Act, 1890, as if that place were a colony.

31. This Act shall come into operation on the first day of October one thousand eight hundred and ninety-three, or any earlier day appointed either generally or with reference to any place or places by royal warrant. **53 & 54 Vict. c. 37. Commencement of Act.**

32. The Regimental Debts Act, 1863, and section fifty-one of the Regulation of the Forces Act, 1881, are hereby repealed. **Repeal.**

33. This Act may be cited as the Regimental Debts Act, 1893. **Short title.**

Royal Warrant—Regulations under the Regimental Debts Act, 1893.

VICTORIA R. & I.

WHEREAS by Our Warrant of 22nd April, 1881, We were pleased to make the Regulations thereunto annexed, being regulations under the Regimental Debts Act, 1863 ; and Whereas by the Regimental Debts Act, 1893, which will come into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ; and Whereas We deem it expedient to make Regulations under the Regimental Debts Act, 1893, to take effect as from the 1st October, 1893, in lieu of the Regulations annexed to Our said Warrant of the 22nd April, 1881 ;

OUR WILL AND PLEASURE is that Our said Warrant of 22nd April, 1881, and the Regulations thereunto annexed, shall be and are hereby cancelled as from the 1st October, 1893, and this Our Warrant and Regulations which shall be administered, construed, and interpreted by Our Secretary of State for War, and Our Secretary of State in Council of India, as the case may require, shall, on and after the 1st October, 1893, subject to and in conjunction with the Regimental Debts Act, 1893, be the sole and standing authority on the matters therein treated of ;

PROVIDED ALWAYS that where and so far as the Regimental Debts Act, 1893, the Army Act, or this Our Warrant and the Regulations thereunto annexed do not particularly prescribe the manner in which any sum of money is to be disposed of or invested, then and in every such case, until by further Warrant under Our Royal Sign Manual we otherwise direct, the same shall be disposed of or invested as the same would have been disposed of or invested if the Acts above quoted had not been passed.

Until by further Warrant under Our Royal Sign Manual We otherwise direct, medals and decorations belonging to persons dying while subject to Military Law shall be disposed of as Our Secretary of State for War may, according to the circumstances of different cases, think fit.

Given at Our Court at Balmoral, this 30th day of August, 1893, in the 57th year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN:

REGULATIONS.

(Section 1 of the Act.)

1. Where the deceased was an officer employed on the staff, the committee of adjustment is to consist of two officers to be appointed by the officer commanding at the station, one of whom should, if practicable, be a field officer.

2. Where the deceased was an officer not employed on the staff, the committee of adjustment is to consist of a major of the regiment or corps, or an officer doing major's duty in his absence, and two other officers of the regiment or corps not under the rank of captain (unless officers of that rank or of the regiment or corps cannot conveniently be had), to be appointed by the commanding officer of the regiment or corps or by the officer commanding at the station.

3. Where the deceased was a warrant officer, non-commissioned officer or man employed on the staff, the committee of adjustment is to consist of any officer, not under the rank of captain, under whom the soldier was serving, and two other officers to be appointed by the officer commanding at the station.

4. Where the deceased was a warrant officer, non-commissioned officer or man not employed on the staff, the committee of adjustment is to consist of the officer commanding the troop, squadron, battery, or company to which the deceased belonged, and two other officers of the regiment or corps to be appointed by the commanding officer.

5. Where the death occurs at sea, and a committee of adjustment does not assemble on board the ship on which the death occurs, a committee will be assembled at the port of arrival.

6. The committee of adjustment will in all cases, except as provided in paragraph 8, as soon as practicable after the death, make an inventory of the property, and an account of the debts and credits of the deceased.

7. The inventory and account will be made in duplicate, on the forms supplied, and both the original and the duplicate will be certified by the committee of adjustment. The original will be dealt with as hereafter directed in these regulations. Where the death occurs in India the duplicate will be sent to the military secretary (a) to the Government of the Presidency in which the deceased was quartered. It will then be delivered by him to the

(a) See note, p. 871.

Administrator-General of the Presidency, or Province, in cases where the surplus is transferred to the Administrator-General under Section 26, § (1) of the Act, and will accompany the remittance of the surplus in cases where § (2) of the same section applies. Where the death occurs elsewhere than in India, the duplicate will be kept with the regimental or other proper records.

8. Where payment of the preferential charges is secured under Section 5 of the Act, the committee of adjustment may abstain from securing and making an inventory of the effects, if so requested by the person paying or securing payment of the preferential charges.

9. The effects secured will be kept in a place of security until duly sold or otherwise disposed of.

10. The expression "regulation area" means the station, colony, or command, or such other area as may, in case of doubt, be determined by the Secretary of State.

(Section 2 of the Act, § (1).)

11. The actual and necessary expenses of the funeral, in the United Kingdom or the colonies, of a warrant officer, non-commissioned officer, or man will be borne by the public to such extent as may be provided for in the allowance regulations.

(Section 5 of the Act.)

12. The expression "any person" means the representative of the deceased, the widow (if any), or one of the next of kin.

13. Where the committee of adjustment withdraw from interference in relation to property of the deceased in consequence of the representative of the deceased, or his widow, or one of his next of kin, paying in full the preferential charges, the committee will forthwith forward, together with the inventory (if made) and account, a report of the facts and circumstances as follows :—

Where the death occurs elsewhere than in India, or the death occurs in India, the deceased being (in the latter case) a soldier of Her Majesty's British Forces, to the Secretary of State for War.

Where the death occurs in India, the deceased not being a soldier of Her Majesty's British Forces, to the military secretary to the Government of the Presidency in which the deceased was quartered.

(Section 6 of the Act, § (1), (2), (3).)

14. Where the death occurs out of the United Kingdom the committee of adjustment may, if they think fit, postpone any sale of the effects until such time, beyond one month, as the next of kin of the deceased have had opportunity of notifying their wishes to the committee regarding the sale or the withholding from sale of any portion of the effects.

15. The effects to be sold will be disposed of at fair and open auction at the most favourable opportunity, in the case of an officer in the presence of a member of the committee of adjustment, and in the case of a soldier in the presence of either the staff officer, or the officer commanding the troop, squadron, battery, or company, under whom the man was serving.

16. Such of the effects as the committee of adjustment do not sell by auction may be sent by them to the representative or next of kin of the deceased; but where it appears desirable to do so, the committee may annex any securities, share certificates, life assurance or other policies, bank deposit receipts or other documents of value to the original inventory and account for transmission to the War Office, or India Office, as the case may be.

17. The practice of employing a non-commissioned officer in selling by auction such of the effects of a deceased officer or soldier as are not otherwise disposed of, will be adopted only in cases in which it appears to be most advantageous for the estate of the deceased. When much trouble and responsibility are thrown upon the non-commissioned officer by his being so employed, a commission, payable out of the effects, at a rate varying from two to five per cent. on the amount of the produce of the sale, according to the greater or less degree of trouble and responsibility thereby caused, may be paid to him, and charged in the statement of the accounts of the deceased, the man's receipt for the amount being annexed thereto, together with the certificate of the commanding officer that his employment as auctioneer was most advantageous for the estate, and that the duties performed by him justify the remuneration charged.

(Section 6 of the Act, § (4).)

18. The committee of adjustment will discharge all debts that have accrued in the same station, colony, or command, which are proved to their satisfaction, except where the death occurs in India, and the deceased is not a soldier of Her Majesty's British forces, in which case

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their discharge is provided for in Section 26 of the Act and paragraph 54 of these regulations.

(Section 6 of the Act, § (6).)

19. Where the deceased was an officer, and the death occurs elsewhere than in India, the committee of adjustment will lodge the surplus in the hands of the district paymaster for credit in his next account, taking a receipt for the amount. This receipt, together with the inventory and the account of debts and credits, will be transmitted by the committee of adjustment to the Secretary of State for War, through the officer commanding at the station.

20. Where the deceased was a non-commissioned officer or man serving in Her Majesty's British forces, then, where the death occurs in India, the committee of adjustment will lodge the surplus in the hands of the officer paying the corps, who will credit the amount in the next casualty return. Where the death occurs elsewhere than in India the surplus will be credited in the pay list of the troop, squadron, battery, or company to which the deceased belonged.

21. Where the death occurs in India, the deceased not being a non-commissioned officer or man serving in Her Majesty's British forces, the committee of adjustment will remit the surplus to the military secretary to the Government to the Presidency in which the deceased was quartered.

22. Whenever a committee of adjustment remit or lodge a surplus they will send or lodge therewith the original inventory and account, except as provided in paragraph 19.

23. In every case the officer present at the sale of effects will furnish a certified statement of the particulars thereof, which will be attached to the original inventory and account, and he will cause the amount produced by such sale to be carried to the credit of the account.

24. In cases in which paragraph 20 applies, the paymaster or other officer paying the corps will ascertain that all the articles reported in the inventory furnished to him as forthcoming are accounted for in the particulars of the sale, and will annex the inventory and account, and the particulars of the sale, to the current account or casualty return rendered by him, and will state therein the balance, debtor or creditor. In cases in which paragraph 21 applies, the military secretary will have the inventory and account, and the statement of the particulars of the sale, compared and examined.

25. Where a regiment of Her Majesty's British forces is stationed in India, monthly casualty returns, made up according to the printed form, will be transmitted to the Secretary of State for War through the controller of military accounts in the Presidency, and sums therein mentioned will be stated in sterling money.

With respect to Her Majesty's Indian forces, similar returns will be transmitted to the Secretary of State in Council in India.

26. Casualty returns from India will specify in each case whether the deceased was known to be possessed of property of any description whatever besides that stated in the casualty return, but not actually realised when the return is made. If any such other property is known, a statement of the particulars thereof, made out in duplicate, will be forwarded with the 'casualty return, and a memorandum will be annexed thereto of the steps that have been taken for recovering or realising the same under the Act. If no such other property is known, a memorandum to that effect will be made on the casualty return.

27. Where a deceased officer, warrant officer, non-commissioned officer, or man leaves a will, then, if representation is not taken out, the original will, and, if representation is taken out, a complete and authenticated copy of the will, will be sent, along with the inventory, account and other papers, by the committee of adjustment, and will be transmitted to the Secretary of State for War, or the Secretary of State in Council in India, as the case may require. Where the original will is sent, a complete and authenticated copy of it will be first made under the direction of the committee of adjustment, and will be kept with the regimental or other proper records.

(Section 7 of the Act.)

28. Payments to the next of kin, or legal representatives of deceased soldiers of Her Majesty's British forces will be made in accordance with the directions on this point in the Financial Instructions. As regards deceased officers, where representation is not taken out, the surplus will be credited by the district paymaster referred to in paragraph 19, or in India will be remitted by the military secretary, as directed in paragraph 55.

(Section 9 of the Act.)

29. In cases in which representation is not taken out, payment will be made to or for the benefit of each person

appearing to be beneficially interested in an estate ; but in special cases, where it appears desirable, payment of the whole residue will be made to the person entitled to take out representation to the deceased.

(Section 10 of the Act.)

30. The notice under Section 10 of the Act will be published in the London Gazette as soon as may be convenient, and will, with such variations as circumstances require, specify the name, rank, and regiment of the deceased, and the amount of the residue.

(Section 14 of the Act.)

31. The committee of adjustment (in India) will deliver over the effects secured by them to the Administrator-General only in case they apprehend that considerable difficulty or delay may arise in or about the collection or realisation of the effects and credits of the deceased, in consequence of the character of any investment, or in consequence of it being requisite to institute some action or suit in relation to the property of the deceased, or in case there is some other peculiar circumstance connected with the property making it, in the judgment of the committee, expedient to take that course.

32. Where the committee of adjustment deliver over effects to an Administrator-General, they will do so as soon as practicable after they have determined to take that course.

33. Where the committee of adjustment deliver over effects to an Administrator-General, they will forthwith forward, together with the inventory and account, a report of the facts and circumstances, as follows :—

Where the deceased was a soldier of Her Majesty's British forces, to the Secretary of State for War ;

In other cases, to the military secretary to the Government of the Presidency in which the deceased was quartered.

34. The Administrator-General will remit to the Secretary of State for India the balance of the estate as soon as possible after the discharge of all debts and liabilities, and after the payment to any persons resident in India of the share or shares to which they may be legally entitled. He will further submit to the Government of India, for transmission to the India Office, a half-yearly return of these estates and the manner in which they have been disposed of.

(Section 22 of the Act.)

35. In the case of an army paymaster, the committee of adjustment will, if possible, comprise a member of the Army Pay Department.

The committee of adjustment are to forthwith remit the surplus to the Secretary of State for War, through the district account or casualty return (see paragraphs 19 and 20), and the residue will then be applied in discharge of any preferential claims that may remain unsettled, or of any claims in respect of public accounts for which the deceased was responsible. Any portion of the residue then remaining will be paid or applied in accordance with Section 9 of the Act.

(Section 23 of the Act.)

36. In all cases of desertion, absence without leave for 21 days, and of a soldier being delivered up as an apprentice, or being convicted of felony by the civil power, the committee of adjustment will be composed in like manner as in the respective cases of death, and the foregoing regulations relative to the respective cases of death will be applied as far as the difference of the circumstances will admit.

37. The kit of an apprentice will be disposed of as provided in the Clothing Regulations, and should he be in possession of any plain clothes when claimed by his master, such clothes will not be sold but returned to the man.

38. In the case of the desertion of a soldier the effects will be sold as soon as may be convenient after he has been declared a deserter, or been absent without leave for 21 days (but within three months from the date of desertion). If, however, the deserter should rejoin while any article of his necessities remain unsold, and if he should require such articles for his military purposes, the articles will be returned to him and he will not be subject to forfeiture in respect thereof.

39. The proceeds of the sale of the effects will be credited in a statement of the deserter's accounts (his "non-effective account"), exhibiting his assets and such of his liabilities as would, under the Act, be preferential charges against the estate. Any sum deposited by the soldier in the regimental savings bank will also be credited in the non-effective account.

40. The balance on the non-effective account shall be applied, so far as it will extend, for the purposes and in the order following, that is to say—

- (a) In payment of any debts due to the public on account of articles of public property made away with, or otherwise lost on desertion, and of any other debts that may be due to the public.
- (b) In payment or satisfaction of such other debts or liabilities of or claims against the soldier, as the Secretary of State for War or the Secretary of State in Council of India shall think fit to allow, including herein claims by reason of any criminal or wrongful act of the soldier.

41. Should any balance then remain the amount will be credited in the accounts of the Paymaster or other accountant in whose accounts the pay of the man to the date of desertion is charged.

42. If the soldier shall rejoin or be recovered to the service within three years from the date of desertion, or, in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraph 40, may be applied in payment of any debts due on account of articles of necessaries issued to the soldier on his rejoining, or of any debts due on account of his re-equipment.

43. If the soldier shall rejoin, or be recovered to the service within one year from the date of desertion, or in the event of his having fraudulently re-enlisted, if such fraudulent re-enlistment has been discovered within that period, any balance left after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42 may be repaid to the soldier himself.

44. Any balance remaining after the settlement of the claims (if any) which may have been payable under paragraphs 40 and 42, shall at the expiration of three years from the date of desertion, be considered as forfeited, and will be disposed of as the Secretary of State for War or the Secretary of State in Council of India respectively may determine.

45. Any articles of private property which may be in the possession of the deserter on his apprehension, or on his rejoining from desertion, shall be sold, and the proceeds, together with any money of which he may be similarly in possession, shall be applied in payment of the debt (if any) on his non-effective account, and any surplus shall be disposed of as provided in paragraphs 40, 42, and 43. If, however, the deserter be not retained in the service, but discharged, any plain clothes of which he may be in possession shall not be sold, but be utilised in

accordance with the provisions of the clothing regulations.

46. Should there be reason to believe that any property or money left behind by the soldier on his desertion, or subsequently found in his possession, has been obtained by theft or fraud, the Secretary of State shall be empowered, at his discretion, to restore such property, or to apply the amount realised by the sale thereof, or the amount of such money towards making good the loss caused by the theft or fraud.

47. In the case of a soldier being delivered up as an apprentice, or convicted of felony by the civil power, the surplus remaining in the hands of the committee of adjustment, together with any balance of pay that may be due, will be applied in all respects in the same manner as mentioned in paragraphs 40, 42, and 43, except that no payment of the residue, under paragraph 43, shall be made to any soldier convicted of felony until he shall have undergone such punishment as he may have been sentenced to for the same.

48. No sum credited as the balance on a soldier's non-effective account, or as the amount realised by the sale of his private property, will be re-charged without special War Office authority. In applying for such authority it should be stated—

- (1.) On what date the man deserted.
- (2.) On what date the man was apprehended, or gave himself up as a deserter, or if he has fraudulently enlisted, on what date such fraudulent enlistment was detected.
- (3.) What are the debts (if any) due by the man respectively, to (a) the public, (b) the officer commanding the troop, squadron, battery, or company, (c) to any other person.
- (4.) In what account the sum in question has been credited to the public.

(Section 24 of the Act.)

49. In cases of insanity the committee of adjustment will be composed in like manner as in the respective cases of death.

50. The foregoing regulations relative to the respective cases of death will be applied in a case of insanity, as far as the difference of the circumstances will admit; except that whenever possible the sale of effects will be deferred until, in the case of an officer, he is removed from the active list, and in the case of a soldier until he is discharged; and further that the committee of

adjustment will forthwith remit or lodge the money remaining in their hands to or in the hands of the army paymaster, military secretary, or other officer or person to whom or in whose hands they are to remit or lodge the surplus in the respective cases of death, and he will forthwith transmit the same to the Secretary of State for War, or the Secretary of State in Council of India, as the case may require.

51. The same will be then, with all convenient speed, applied for the benefit of the officer or soldier to whom it belongs, in such manner as the Secretary of State for War or the Secretary of State in Council of India (as the case may be) in his discretion thinks fit.

(Section 26 of the Act, § (1).)

52. As soon as possible after receiving the surplus from the committee of adjustment, the military secretary will cause the notice under Section 26 of the Act, § (1), to be published by advertisement in the Government Gazette of the Presidency in which the deceased was quartered.

53. The notice will be in the following form, with such variations as circumstances require :—

The Regimental Debts Act, 1893, Section 26, § (1).

Notice is hereby given :

First. That information has been received by me of the deaths of the Officers, Warrant Officers, non-commissioned officers, and soldiers named and described in the subjoined table.

Secondly. That there have been received by me, as the surplus of their respective properties, the amount set opposite their respective names in the same table.

Thirdly. That all claims by creditors against the respective properties of the deceased are to be lodged with me within two calendar months from the date of this notice.

(Signed) A. B.,
Military Secretary.

Calcutta, the day of

The Table before referred to.

| Number. | Christian name and surname in full of Officer, Warrant Officer, non-commissioned officer, or soldier deceased. | Branch of Service to which deceased belonged. | No. of regiment. | Rank of deceased. | Place of death. | Date of death. | Amount of surplus. | Whether deceased is known to have left a will or not. | Other particulars respecting deceased and his property; and remarks. | Number. |
|---------|--|---|------------------|-------------------|-----------------|----------------|--------------------|---|--|---------|
| 1 | | | | | | | | | | 1 |
| 2 | | | | | | | | | | 2 |
| 3 | | | | | | | | | | 3 |
| 4 | | | | | | | | | | 4 |

54. At the expiration of two months from the date of the first publication of the notice, the military secretary will, in the following cases, proceed to discharge demands of such claimants as lodge claims with him :—

- (1.) If the surplus does not exceed 1,000 rupees, and the claims lodged do not exceed in the whole 10 per cent. on the amount of the surplus.
- (2.) If the surplus exceeds 1,000 rupees, and the claims lodged do not exceed in the whole the sum of 100 rupees.

(Section 26 of the Act, § (2).)

55. In those cases in which, after the discharge of claims under paragraph 54 of these regulations, the military secretary does not dispose of the surplus locally under Section 7 of the Act, he will, as soon as possible after two months, and within six months after the first publication of the notice, remit the surplus as follows :—

In the cases of officers of Her Majesty's army constituting the Indian Staff Corps, and in the cases of officers and European soldiers of Her Majesty's Indian forces, to the Secretary of State in Council of India.

In other cases to the Secretary of State for War.

NOTE.—The expression "Military Secretary" in these regulations means, in the case of the Madras and Bombay Presidencies, any Officer who may hereafter be authorized by the Governor-General in Council in India to perform the functions of Military Secretary for the purpose of these regulations in those Presidencies.

Royal Warrant—Soldiers' Effects Fund.

VICTORIA R. & I.

WHEREAS by our Warrants of the 12th June, 1884, and the 16th July, 1887, We were pleased to make regulations for carrying into effect the provisions of Section 18 of the Regimental Debts Act, 1863, respecting the undisposed of residues of the effects of persons dying on service while subject to military law ;

AND WHEREAS by the Regimental Debts Act, 1893, which comes into operation on the 1st October, 1893, the Regimental Debts Act, 1863, is repealed ;

AND WHEREAS We deem it expedient by this Our Warrant to make regulations for carrying into effect the provisions of Section 10, § (2), of the Regimental Debts Act, 1893 ;

NOW THEREFORE OUR WILL AND PLEASURE IS, and We do by this Our Warrant direct, as follows :—

1. Our Warrants of the 12th June, 1884, and the 16th July, 1887, shall be and the same are hereby cancelled as from the 1st October, 1893.

2. All such undisposed of and unappropriated residues, mentioned in Section 10, § (2), of the Regimental Debts Act, 1893, as are now in the hands of Our Secretary of State for War, and are applicable as mentioned in that sub-section, together with any income or accumulations of income accrued therefrom, shall forthwith, and all such undisposed of and unappropriated residues, as shall, from time to time, hereafter be in the hands of Our Secretary of State for War for the time being, together with any income and accumulations of income accrued therefrom, shall, from time to time, until We shall by Our Warrant direct to the contrary, be paid over and transferred unto the Official Trustees for the time being of the Patriotic Fund ; and We do hereby order and direct the payment over and transfer of the said residues and income and accumulations of income accordingly.

3. All residues and income and accumulations of income so to be paid over or transferred as aforesaid from time to time, shall form one fund to be called the "Soldiers' Effects Fund," to be under the management and control of the Executive Committee for the time being of Our Commissioners for the time being of the said Patriotic Fund, but subject to and under such orders and regulations as may from time to time be made by Our said Commissioners or any three or more of them ; and shall be applied in payment of such compassionate, annual, or

other allowances, to the widows and children or other dependent relatives of soldiers dying on service, or within six months after discharge, and generally in such manner for the benefit of such widows and children or other dependent relatives of soldiers dying as aforesaid, as the said Executive Committee, or any two or more of them, shall, from time to time, think fit, preferential consideration being given to the widows and children of soldiers on the married establishment, who—

- (a) Were killed in action, or died of wounds received in action, or from illness which can be directly traced to fatigue, privation, or exposure incident to active operations in the field, within 12 months of sustaining such wound or contracting such illness ;
- (b) Died from an injury directly traceable to military duty within 12 months of sustaining such injury ;
- (c) Died from illness directly traceable to fatigue, privation, or exposure in the performance of military duty.

4. The widows and children of Mobilised Army Reserve men dying as aforesaid shall be considered as on the married establishment.

5. The said "Soldiers' Effects Fund" shall be held by the Official Trustees for the time being of the said Patriotic Fund, on behalf of Our said Commissioners for the time being as having the management thereof. Our said Commissioners shall be at liberty to invest the said "Soldiers' Effects Fund" upon such investments as they or any three or more of them shall from time to time think fit, and shall keep separate accounts of the said Fund.

6. This Warrant shall come into operation on the 1st October, 1893.

Given at Our Court at Osborne, this 22nd day of August, 1893, in the 57th Year of Our Reign.

By Her Majesty's Command,

H. CAMPBELL-BANNERMAN.

Customs of War.

CHAPTER XIV.

FORMS.

FORM OF CAPITULATION.

Marteus, *A.B.* Major-General, having full powers from
 Recueil de *C.D.* General, Commander-in-Chief of Her
 Traités, ix, Britannic Majesty's Forces, now in to negotiate
 195, xiv, 288, terms for the capitulation of the town and fortress of
 877.1 and *E.F.* General of Division, having full powers
 from His Excellency *G.H.* Military Governor
 of the said town and fortress of in relation to
 negotiating terms for the said capitulation, have agreed to
 the following stipulations :—

xiv, 289, Art. 1. The town and fortress of together
 xxi, 63-4. with forts and and all other outlying fortifi-
 cations, also the guns, warlike materials, and military stores
 of every description, subject only to the exceptions herein-
 after mentioned, shall be surrendered in their existing
 state to the Forces of Her Britannic Majesty.

ix, 195, 204, Art. 2. The garrison shall march out from the
 207. Gate, at (10 a.m.) on the day of with all the
 xxi, 64. honours of war, including colours flying, and drums beat-
 ing, and shall lay down their arms on the glacis, and shall
 be transported as prisoners of war to such places as may
 be decided upon.

iv, 196, 204, Art. 3. The officers of the garrison shall retain their
 207. swords, accoutrements, and horses [and shall be released
 xiv, 825, on parole]. The troops of the garrison shall retain their
 xxi, 64. knapsacks.

ix, 196, 205, Art. 4. The sick and wounded of the garrison shall be
 207. regarded as prisoners of war. Those who are in a fit state
 xiv, 290, 881. to be moved shall accompany the garrison. The remainder
 xxi, 64. shall be committed to the protection of the officer com-
 manding Her Britannic Majesty's force in
 and shall be attended by medical officers (*a*)
 until their condition admits of their removal as prisoners
 of war.

So long as there remain in any sick or
 wounded of the garrison, a competent staff of medi-
 cal officers shall remain in charge of them (*a*).

(a) The medical officers in this Article are medical officers sent by the Government to whom the wounded belong.

Art. 5. All classes of the inhabitants of the town of ix, 197, 205, 208.
 shall be permitted to remain in full enjoyment of their xiv, 825.
 property, privileges, rights and liberties, in the exercise of
 their lawful trades and callings, and shall not be in any
 way called to account for any acts or opinions prior to the
 date of the capitulation, and shall be at liberty to remain
 in ix, 198, 207.
 or to depart at any time, and so long as they
 remain shall be under the protection of the officer com-
 manding Her Britannic Majesty's troops in

Art. 6. An inventory shall be drawn up of all the guns, ix, 198, 207.
 warlike material, and military stores, agreed to be surren-
 dered, and commissions shall be appointed on each side
 to superintend the transfer of all such guns, material, and
 stores, in accordance with Article 1.

Art. 7. Any difficulties that may arise respecting the ix, 197-9, 208.
 interpretation of any of these Articles shall be determined xiv, 291, 826, 882.
 as far as possible in favour of the garrison.

Art. 8. This capitulation shall not come into force until ix, 198, 204
 it has been ratified by the signatures of the above-men- xxi, 65.
 tioned *C.D.* and *G.H.*, but immediately on the capitulation
 being so ratified, the ix, 198, 204
 gate shall be occupied by a
 detachment of British troops.

Made at

the day of 18 .
 (Signed)

FORM OF ARMISTICE (No. 1).

General Armistice between two opposing Forces.

A.B. authorized by *C.D.*
 Commanding-in-Chief Her Britannic Majesty's Forces
 in and *E.F.* authorized by *F.H.*
 Commanding-in-Chief the troops in
 agree to the following Articles :—

Art. 1. On publication of this Armistice, hostilities shall
 cease between the British and forces
 at all points along the frontier of between
 and

Art. 2. The Armistice shall continue until noon on the
 day of and until such further time as is
 hereinafter mentioned.

Art. 3. Either side may at any time on or after the said
 day of give six days' notice of their intention
 to determine the armistice and the armistice shall be
 determined at the expiration of such six days. Notice
 shall be given by writing, stating the intention to deter-

mine the armistice, and sent from the head-quarters of one army to the head-quarters of the other army. In reckoning time for the purpose of the said six days' notice, the day on which the notice is given, at whatever hour the same may be given, shall be reckoned as an entire day, and the armistice shall expire at midnight of the fifth day succeeding the day on which the notice is given.

Art. 4. The following lines of demarcation shall be strictly adhered to during the armistice, that is to say, for the British army

and for the army
The territory lying between the two lines of demarcation shall be strictly neutral, and any advance into it by any member of either army is prohibited, except for the purposes of communications between the two armies. Neither army shall extend their line in a
or direction beyond the points named as the extremities of their respective lines.

Art. 5. Subject to the restrictions mentioned in the 4th Article, as respects making an advance into the neutral territory, either army may take measures to strengthen its position, and may receive reinforcements and stores of war-like and other material, and may do any other act not being an act of direct hostility (a).

Art. 6. During the two days following the day on which this armistice is ratified, burial parties from both armies shall be permitted to visit the field of battle of the instant, for the purpose of burying the dead.

Art. 7. Two officers of field rank shall be appointed from each army to meet together without delay at for the purpose of determining the precise course of the lines of demarcation of the two armies, in so far as their precise course is not laid down in Article 4.

Art. 8. During the continuance of the armistice, the peaceful inhabitants of the country shall be allowed to pursue their occupations, and to buy or sell provisions or goods to either army, but any measures consistent with the observance of the articles of the armistice in relation to the neutral territory may be taken by either army to prevent inhabitants, after entering the lines of or obtaining information respecting one army from passing or carrying information to the other army.

Art. 9. This armistice shall come into force immediately

(a) The difficulties in ascertaining what opposing armies can lawfully do during an armistice according to the customs of war are so great that precise directions should always be inserted in the armistice as to the acts to be done or to be prohibited from being done by each party. This form permits anything to be done which is not of an aggressive character.

on its ratification by the Commanders-in-Chief of the two armies, and Officers shall be dispatched with all speed, from the headquarters of each army, to give notice of the armistice at all points along the line.

FORM OF ARMISTICE (No. 2).

Between Besieging Force and Garrison.

A.B., General, Commander-in-Chief of Her Britannic Majesty's Forces now in _____ and C.D., General, Commander-in-Chief of the garrison of _____, agree to the following articles :—

Art. 1. An armistice between the British troops investing _____ and the troops forming the garrison of _____ shall begin at noon on the 15th instant; and shall end at noon on the 25th instant. ix., 657.

Art. 2. White flags shall be hoisted simultaneously at the beginning of the armistice, the one at _____ within the British lines, and the other on Fort _____.

The flags shall be kept flying during the continuance of the armistice, and shall be lowered simultaneously at its conclusion.

Art. 3. Provisions to the extent of _____ rations shall be supplied daily for the use of the garrison by the besiegers on payment of such sums as may be agreed upon as the value thereof, by commissioners to be appointed by the above-named Commanders-in-Chief respectively. The provisions shall be delivered to persons authorized to demand the same by the general commanding the garrison, at such times, and in such places in front of the British lines, as may be agreed upon by the above-named Commanders-in-Chief, and shall be conveyed to the garrison by the persons authorised as above stated.

Art. 4. Save in so far as is provided by Article 3, or as may be agreed upon between the above-named Commanders-in-Chief, it is agreed that the garrison shall not attempt to obtain succour, and that no communication whatever shall, during the armistice, take place between the garrison, and any person outside of the garrison, whether friend or enemy, and a space of _____ around the fortification shall be considered neutral ground, and no person whatever, whether he be a stranger or belonging to the garrison, or to the besieging army, shall be allowed to enter on such space without the permission of the above-named Commanders-in-Chief.

Art. 5. General _____ commanding the garrison, engages on behalf of the garrison not to repair the fortifications.
(M.L.)

cations, or to undertake any new siege-works, or do any act or thing whatsoever calculated to place the garrison in a better position in regard to its defence ; and General

on behalf of the British troops, engages not to undertake any siege-works, or to make any hostile movement against the garrison, but it is understood that he is at liberty to obtain fresh supplies of provisions or reinforcements of troops.

Form of Suspension of Arms for the Burial of the Dead.

General *A.B.*, commanding the British forces at _____
and General *C.D.*, commanding the _____
forces at _____ agree as follows :—

Art. 1. A suspension of arms for the space of three hours, beginning at ten o'clock and ending at one o'clock on this day of _____ is agreed to for the purpose of burying the dead and withdrawing the wounded.

Art. 2. The beginning of the suspension of arms shall be notified by two white flags hoisted simultaneously, the one within the British lines, and the other within the enemy's lines. The white flags shall continue flying during the suspension of arms, and such flags shall be lowered simultaneously as a signal of the conclusion of the suspension of arms.

Art. 3. The British troops shall not, during the suspension of arms, advance beyond the _____ line, and the _____ troops shall not advance beyond the _____ line. The space beyond the two lines shall be open to all persons engaged in burying the dead, or in attending to the wounded, or in carrying away the dead or the wounded, but to no other persons.

Art. 4. All firing shall cease during the suspension of arms. The troops on both sides may take meals, and do all acts necessary for supplying themselves with food, but save as aforesaid they shall remain in their existing positions, and shall not undertake any military operation or movement whatsoever.

Geneva Convention.

*For the Amelioration of the Condition of the Wounded
in Armies in the Field, August 22, 1864.*

ARTICLE I.

Les ambulances et les hôpitaux militaires seront reconnus neutres, et, comme tels, protégés et respectés par les belligérants aussi longtemps qu'il s'y trouvera des malades ou des blessés.

La neutralité cesserait si ces ambulances ou ces hôpitaux étaient gardés par une force militaire.

ARTICLE II.

Le personnel des hôpitaux et des ambulances, comprenant l'intendance, les services de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

ARTICLE III.

Les personnes désignées dans l'Article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent.

Dans ces circonstances, lorsque ces personnes cesseront leurs fonctions, elles seront remises aux avant-postes ennemis, par les soins de l'armée occupant.

ARTICLE IV.

Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachées à ces hôpitaux ne pourront, en se retirant, emporter que les objets qui sont leur propriété particulière.

Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

ARTICLE V.

Les habitants du pays qui porteront secours aux blessés seront respectés, et demeureront libres. Les Généraux des Puissances belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence.

Tout blessé recueilli et soigné dans une maison y sera
(M.I.)

viра de sauvegarde. L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

ARTICLE VI.

Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiendront.

Les Commandants en chef auront la faculté de remettre immédiatement aux avant-postes ennemis, les militaires blessés pendant le combat, lorsque les circonstances le permettront, et du consentement des deux partis.

Seront renvoyés dans leurs pays ceux qui, après guérison seront reconnus incapables de servir.

Les autres pourront être également renvoyés, à la condition de ne pas reprendre les armes pendant la durée de la guerre.

Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

ARTICLE VII.

Un drapeau distinctif et uniforme sera adopté pour les hôpitaux, les ambulances, et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau national.

Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire.

Le drapeau et le brassard porteront croix rouge sur fond blanc.

ARTICLE VIII.

Les détails d'exécution de la présente Convention seront réglés par les Commandants-en-chef des armées belligérantes, d'après les instructions de leurs Gouvernements respectifs, et conformément aux principes généraux énoncés dans cette Convention.

ARTICLE IX.

Les Hautes Puissances Contractantes sont convenues de communiquer la présente Convention aux Gouvernements qui n'ont pu envoyer des Plénipotentiaires à la Conférence Internationale de Genève, en les invitant à y accéder ; le Protocole est à cet effet laissé ouvert.

ARTICLE X.

La présente Convention sera ratifiée, et les ratifications

en seront échangées à Berne, dans l'espace de quatre mois, ou plus tôt si faire se peut.

En foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé le cachet de leurs armes.

Fait à Genève, le vingt-deuxième jour de mois d'août, de l'an mil huit cent soixante-quatre.

TRANSLATION.

ARTICLE I.

Ambulances and military hospitals shall beacknowledged to be neutral, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein.

Such neutrality shall cease if the ambulances or hospitals should be held by a military force.

ARTICLE II.

Persons employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality whilst so employed, and so long as there remain any wounded to bring in or to succour.

ARTICLE III.

The persons designated in the preceding Article may, even after occupation by the enemy, continue to fulfil their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when those persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

ARTICLE IV.

As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property.

Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

ARTICLE V.

Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The Generals of the belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops as well as from a part of the contributions of war which may be imposed.

ARTICLE VI.

Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement when circumstances permit this to be done, and with the consent of both parties.

Those who are recognised, after their wounds are healed, as incapable of serving, shall be sent back to their country.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Evacuations, together with the persons under whose directions they took place, shall be protected by an absolute neutrality.

ARTICLE VII.

A distinctive and uniform flag shall be adopted for hospitals, ambulances, and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (*brassard*) shall also be allowed for individuals neutralised, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

ARTICLE VIII.

The details of execution of the present Convention shall be regulated by the Commanders-in-Chief of belligerent armies, according to the instructions of their respective Governments, and in conformity with the general principles laid down in this Convention.

ARTICLE IX.

The High Contracting Powers have agreed to communicate the present Convention to those Governments which have not found it convenient to send Plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto; the Protocol is for that purpose left open.

ARTICLE X.

The present Convention shall be ratified, and the ratifications shall be exchanged at Berne in four months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Geneva, the twenty-second day of August, one thousand eight hundred and sixty-four.

LIST of the Powers which originally signed the Convention and of those which subsequently acceded to it; with dates of their Accessions.

| | Dates of Accession. |
|------------------------------------|---------------------|
| Argentine Republic | November 25, 1879 |
| Austria | July 21, 1866 |
| Baden* | |
| Bavaria | June 30, 1866 |
| Belgium* | |
| Bolivia | October 16, 1879 |
| Chile | November 15, 1879 |
| Denmark* | |
| France* | |
| Germany. <i>See</i> Prussia | |
| Great Britain | February 18, 1865 |
| Greece | January 15, 1865 |
| Hesse-Darmstadt* | June 22, 1866 |
| Italy* | |
| Mecklenburgh-Schwerin | March 9, 1865 |
| Montenegro | November 13, 1875 |
| Netherlands* | |
| Persia | December 5, 1874 |
| Peru | April 22, 1880 |
| The Pope | May 9, 1868 |
| Portugal* | August 9, 1866 |
| Prussia* | |
| Roumania | November 15, 1874 |
| Russia | May 12, 1867 |

* The Convention of August 22, 1864, was signed by Baden, Belgium, Denmark, France, Hesse-Darmstadt, Italy, Netherlands, Portugal, Prussia, Spain, Switzerland, and Würtemberg; but Hesse-Darmstadt, Portugal, and Würtemberg omitted to ratify the Convention at the time, and they therefore acceded to it afterwards.

| | | | | | Dates of Accession. | |
|-------------------|-----|-----|-----|-----|---------------------|----------|
| Salvador | ... | ... | ... | ... | December | 30, 1874 |
| Saxony | ... | ... | ... | ... | October | 25, 1866 |
| Servia | ... | ... | ... | ... | March | 24, 1876 |
| Spain* | ... | ... | ... | ... | | |
| Sweden and Norway | ... | ... | ... | ... | December | 30, 1864 |
| Switzerland* | ... | ... | ... | ... | | |
| Turkey | ... | ... | ... | ... | July | 5, 1865 |
| United States | ... | ... | ... | ... | March | 1, 1882 |
| Württemberg* | ... | ... | ... | ... | June | 2, 1866 |

* The Convention of August 22, 1864, was signed by Baden, Belgium, Denmark, France, Hesse-Darmstadt, Italy, Netherlands, Portugal, Prussia, Spain, Switzerland, and Württemberg; but Hesse-Darmstadt, Portugal, and Württemberg omitted to ratify the Convention at the time, and they therefore acceded to it afterwards.

INDEX.

EXPLANATION OF REFERENCES.

The references in the first column are to the Army Act, and Rules of Procedure, and to the Miscellaneous Enactments, Regulations, and Forms printed in Part III of the Manual.

The letter A., and
references to
sections with-
out any prefix } refer to the Army Act (44 & 45 Vict., c. 58).

| | | |
|--------------------|---|--|
| The letters A.D.R. | „ | Army Discipline and Regulation Act, 1879 (42 and 43 Vict., c. 33). |
| „ C.A. | „ | Army Discipline and Regulation (Commencement) Act, 1879 (42 and 43 Vict., c. 32). |
| „ M., 1882 | „ | Militia Act, 1882 (45 and 46 Vict., c. 49). |
| „ R., 1842 | „ | Railway Act, 1842 (5 & 6 Vict., c. 55). |
| „ R., 1844 | „ | Railway Act, 1844 (7 & 8 Vict., c. 85). |
| „ Reg. F., 1871 | „ | Regulation of the Forces Act, 1871 (34 & 35 Vict., c. 86). |
| „ Reg. F., 1881 | „ | Regulation of the Forces Act, 1881 (44 & 45 Vict., c. 57). |
| „ R.F., 1882 | „ | Reserve Forces Act, 1882 (45 and 46 Vict., c. 48). |
| „ R.F., 1890 | „ | Reserve Forces Act, 1890 (53 and 54 Vict., c. 42). |
| „ R.D. | „ | Regimental Debts Act, 1893 (56 Vict., c. 5). |
| „ R.P. | „ | Rules of Procedure made in pursuance of the Army Act. |
| „ R.S.P. | „ | Rules for Summary Punishment made under the Army Discipline and Regulation (Annual) Act, 1881 (30th July, 1881). |
| „ Q.R. | „ | The Queen's Regulations and Orders for the Army, 1893. |
| „ R.W. | „ | Royal Warrant and Regulations under the Regimental Debts Act, 1893. |

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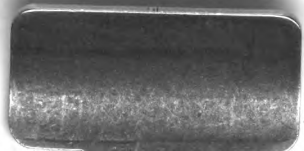
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